

2015

State of Utah v. Adam Howard Jones : Brief of Petitioner State of Utah

Utah Supreme Court

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Case No. 20140753-SC

IN THE
UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Petitioner,

v.

ADAM HOWARD JONES,
Defendant/Respondent.

Brief of Petitioner State of Utah

On Writ of Certiorari to the Utah Court of Appeals

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UTAH APPELLATE COURTS

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Brief of Petitioner

STATEMENT OF JURISDICTION

The magistrate refused to bind Jones over for trial on official misconduct and witness tampering. The State appealed to the court of appeals, which affirmed the magistrate's ruling. *See State v. Jones*, 2014 UT App 142, 330 P.3d 97 (Addendum A). This Court issued a writ of certiorari to review the court of appeals' decision, and thus has jurisdiction under Utah Code Ann. § 78A-3-102(5) (West 2009).

STATEMENT OF THE ISSUES

The existence of probable cause at the preliminary hearing stage often turns on reasonable inferences from the evidence. And the evidence often supports more than one reasonable inference. When reasonable inferences conflict, the magistrate must adopt the one favoring the prosecution. As

this Court recently made clear in *State v. Maughan*, a magistrate may not weigh inferences in light of the totality of the evidence—that is, adopt a defense-friendly inference on the basis that it is just as likely or even more likely true than a prosecution-friendly one. A magistrate who does that oversteps his bounds and usurps the jury’s role.

Here, both the magistrate and the court of appeals refused to draw prosecution-friendly inferences on the basis that they were less or “just as likely” as defense-friendly inferences in light of the “totality of the evidence.”

This Court granted review on two issues:

1. “Whether the court of appeals erred in determining [the State] presented insufficient evidence at [Jones’s] preliminary hearing to warrant inferences that he committed official misconduct.”
2. “Whether the court of appeals erred in determining [the State] presented insufficient evidence at [Jones’s] preliminary hearing to warrant inferences that he tampered with a witness.”

Standard of Review. This Court reviews the court of appeals’ decision for correctness, “recognizing that the correctness of its decision turns in part on whether it applied an appropriate standard of review in affirming the

magistrate's decision," which is "a mixed determination . . . entitled to some limited deference." *State v. Maughan*, 2013 UT 37, ¶12, 305 P.3d 1058.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes are reproduced in Addendum B:¹

Utah Code Ann. § 76-8-201 (official misconduct);

Utah Code Ann. § 76-8-508 (witness tampering);

Utah Code Ann. § 77-36-2.1, -2.2 (relevant portions of Cohabitant Abuse Procedures Act).

STATEMENT OF THE CASE

A. Summary of facts.²

Alleged official misconduct. Kamas City Police Chief Adam Jones had a long history of dealing with his alcoholic brother Travis. When drunk, Travis acted "stupid," "unreasonable," and "extremely violent," particularly toward his girlfriend Darcy Martinez. R29:5-8, 25; State's Exh. 1 at 6-17. Darcy sometimes called Jones to calm Travis when he was drunk. R29:5, 7-8, 25; State's Exh. 1 at 3-4, 11. Before February 2011, Darcy

¹ Unless otherwise noted, the State cites the current versions of statutes for the Court's convenience.

² Because Jones has not been convicted, he retains the presumption of innocence. Consistent with the bindover standard, the facts are stated "in the light most favorable to the prosecution," with all "reasonable inferences" drawn in favor of the prosecution. See *State v. Clark*, 2001 UT 9, ¶10, 20 P.3d 300 (citation and quotation omitted). The State has attached the preliminary hearing transcript and police interview transcript as Addenda C and D.

"luckily" had always called Jones when he was off-duty. State's Exh. 1 at 11.

But this time, Darcy called Jones on his personal cell phone at about 9:45 p.m., when Jones was on duty, in uniform, and in his office. R29:4, State's Exh. 1 at 3-4. According to Jones, Darcy said that he "needed to come over and talk [to] or take care of" Travis. R29:3-5, 56-57.³ Jones "didn't want to deal with" the fighting between Travis and Darcy; he had dealt with it "a hundred times before." R29:4-5; State's Exh. 1 at 9. But he immediately drove his patrol car the four blocks to their home. R29:4-5; State's Exh. 1 at 5.

Jones was met by a drunk and underwear-clad Travis. State's Exh. 1 at 6-7. Travis pointed to scratches on his chest and said, "look what she did to me." R29:4-6; State's Exh. 1 at 5-7. He insisted that Jones speak to Darcy about it. R29:4-6; State's Exh. 1 at 5-7.

Jones found Darcy in the garage. State's Exh. 1 at 7. She said that Travis "can't do this to me anymore." R29:5-6, State's Exh. 1 at 7. She said that Travis was "out of control" and had kicked her in the leg. R29:5-6;

³ Jones later changed his story, telling investigators that Darcy did not tell him why she wanted him to come over, and that he had assumed she wanted help with her ten-year-old son. R29:4; State's Exh. 1 at 4.

State's Exh. 1 at 7. Jones said he looked at her leg, but claimed he saw no injury. R29:6; State's Exh. 1 at 8.

Travis then came into the garage and repeated, "look what she did to me." State's Exh. 1 at 8. Darcy insisted that Travis had scratched himself and she asked Jones to "calm him down." State's Exh. 1 at 7-8.

Jones replied, "he's my brother; . . . I cannot deal with him." *Id.* at 7. Jones asked Darcy if she wanted to call the sheriff's office to "file a report," but she declined because she could not "afford" to have Travis go to jail "again." *Id.* at 8. Jones left the garage to speak with Travis, who admitted to scratching himself to get Darcy arrested. R29:6; State's Exh. 1 at 8.

Jones put Travis—who was "on the verge of [] passing out"—to bed, and told the couple to stay away from each other. R29:23; State's Exh. 1 at 9. He told them that if they wanted file a police report, they would have to call the Summit County Sheriff's Office because Jones could not be professionally involved where his family was concerned. R29:6-7, 22, 66. Jones left without arresting or citing Travis, writing a report, or giving Darcy written notification of her rights as required by the Cohabitant Abuse Procedures Act. *See* R29:13-14; State's Exh. 1 at 10, 12-13.

Jones then returned to the station, where he clocked out from his shift shortly after 10:00 p.m. State's Exh. 1 at 12.

About 45 minutes later, Jones saw on his home computer that Summit County Sheriff's deputies had been dispatched to Travis's home on a 911 call. State's Exh. 1 at 14. Jones listened to the unfolding events on his police radio. R29:35-36, 59; State's Exh. 1 at 14. Darcy called Jones later that night, but he "knew that she was calling" about Travis, so did not answer. R29:59.

When deputies arrived at the home, Darcy was "crying" and "obviously distraught." *Id.* at 36. Travis was "loud," vulgar, and "[v]ery aggressive," to the point that they had to handcuff him. *Id.* at 36, 45. The deputies saw "injuries on both Darcy" —including bruising on her leg— and her ten-year-old son. *Id.* at 46, 51; State's Exh. 1 at 1. They arrested Travis, who "kept up with a violent, vulgar tirade the whole way to the jail." R29:46. Around midnight, the deputies learned that Jones had been to the home earlier. *Id.* at 48.

Alleged witness tampering. The next morning, Jones visited Travis in jail. *Id.* at 53-54. Because Travis's cell was near the booking counter, the on-duty deputy overheard their conversation: Jones told Travis that he had been to the home the night before, but that Travis was "passed out on his bed." *Id.* at 55-56, 63-64. Jones told Travis that he needed to "do something about his drinking." *Id.* at 56.

After talking to Travis, Jones told the on-duty deputy that Darcy had called him the night before to “come over and talk [to] or take care of his brother”; that Travis was “passed out, intoxicated in his bed” when Jones arrived; and that Jones had “instructed her not to wake him up.” *Id.* at 56-57, 63-64.

B. Summary of proceedings.

The State charged Jones with three counts: (1) official neglect and misconduct, a class A misdemeanor; (2) in the alternative, official misconduct, a class B misdemeanor; and (3) witness tampering, a third degree felony. R30-33, 58. Only counts (2) and (3) are at issue here.⁴

Both remaining counts relate to Jones’s alleged failure to comply with the Cohabitant Abuse Procedures Act (the Act), Utah Code Ann. § 77-36-1 *et seq.* Under the Act, when a peace officer “responds to a domestic violence call and has probable cause to believe” that someone has committed domestic violence, he must arrest or cite the alleged offender. *Id.* § 77-36-2.2(2)(a). If the officer “has probable cause to believe that there will be continued violence against the alleged victim,” he must arrest the alleged offender. *Id.* § 77-36-2.2(2)(b)(i). Where—as here—two or more parties

⁴ Although the State appealed the magistrate’s ruling refusing to bind over on (1)—official neglect and misconduct—it did not seek (and this Court did not grant) certiorari review on the court of appeals’ affirmance on that count.

complain of domestic violence, the officer must determine who the "predominant aggressor was," taking into account any prior complaints, current injuries, the likelihood of future injury, and the possibility of self-defense. *Id.* § 77-36-2.2(3). Once the officer has made that determination, he must arrest or cite accordingly. *Id.*

If the officer does not arrest or cite an alleged offender, he must nevertheless "notify the victim of the right to initiate a criminal proceeding," and "the importance of preserving evidence"; give the victim "written notice" of their "rights and remedies" under the Act; and "submit a detailed, written report specifying the grounds for not arresting any party." *Id.* §§ 77-36-2.2(2)(c) & (5)(a)-(b); -2.1(2)(a).

Jones filed a motion to dismiss the charges after preliminary hearing. R34-49. The State opposed the motion. R51-69.

Arguments on official misconduct. A (1) "public servant" commits official misconduct when he (2) "knowingly refrains from performing a duty imposed on him by law" (3) with the intent "to benefit himself or another." *Id.* § 76-8-201. A "public servant" is "any officer or employee of the state or any political subdivision of the state" *Id.* § 76-8-101(5).

Jones conceded in the trial court that as a police officer, he "was a public servant." R44. But he argued that the State had not shown probable

cause for official misconduct because the evidence showed that he responded to his brother's home not in his capacity as a police officer, but as a private citizen and brother; that he was not "responding" to a domestic violence call because the girlfriend did not allege domestic violence when she called Jones; and that he did not have probable cause to believe that his brother committed domestic violence where his girlfriend had no mark on her leg. R44-45, 47-48. Thus, defense counsel argued, he had no duty to comply with the Act. R46-48. He also argued that he did not act to benefit himself or another because he repeatedly offered to call the sheriff's office, but the girlfriend refused. R45-46.

The State's theory on official misconduct was that Jones—a police officer—was a public servant who was aware of domestic violence, but who knowingly refrained from performing the duties that the Cohabitant Abuse Procedures Act imposed on him and that he did so with the intent to benefit himself and/or his brother. *See* R60-66.

The State argued that the evidence—Jones being on duty, in uniform, in his police car, and being met with his brother's allegation of domestic violence when he arrived—supported a reasonable inference that Jones was acting as a police officer rather than as a brother. R60.

The State further argued that the evidence supported a reasonable inference that Jones had "refrained from performing" his duties under the Act because Jones had probable cause to believe that his brother had committed domestic violence against his girlfriend where Darcy alleged that Jones had kicked her, yet he did not cite or arrest his brother, did not give the alleged victim written notice of her rights and remedies under the Act, and did not submit "a detailed, written report specifying the grounds for not arresting any party." R62-66.

The State also argued that the evidence supported a reasonable inference that Jones refrained from complying with the Act with the intent to benefit himself or another by saving himself and/or his brother the embarrassment, trouble, and expense of complying with the arrest, citing, and reporting requirements. R61-62.

Arguments on witness tampering. A person commits witness tampering when (1) he believes that "an official proceeding or investigation is pending or about to be instituted," or intending "to prevent an official proceeding or investigation," he (2) "attempts to induce or otherwise cause another person to" either "testify or inform falsely" or "withhold any testimony [or] information." Utah Code Ann. § 76-8-508(1)(a)-(b).

Jones argued that he lacked the mental state to commit witness tampering because (1) he did not believe that an investigation into his conduct was proceeding because he visited his brother so soon after the previous night's events; and (2) that Jones's lie to his brother was "not inconsistent" with what Jones told investigators, but rather was "nothing more than an explanation of the events the night before," because the brother was in bed asleep before Jones left. R41-43.

The State's theory on witness tampering was that Jones knew that he had failed to comply with the Act and also knew—from monitoring his computer and police radio—that Sheriff's deputies responded to the house on a domestic violence call 45 minutes after he left. R67-68. Thus, he could reasonably believe that they would discover his failures and launch an "official proceeding or investigation," or at least that he "intend[ed] to prevent" such an investigation. To hinder or prevent that investigation, he then tried to induce his brother to testify or inform falsely by suggesting (falsely) to his brother that he had been passed out the entire time Jones had been at his house the night before. R66-69.

The State argued that the most reasonable inference from Jones's lie to his brother—repeated to the on-duty jail deputy—was that Jones wanted his brother to back up this false story either to prevent an investigation into

Jones's handling of the call or to influence its outcome. R68. Indeed, the State argued, it was difficult to conceive of another motive for making the patently false statement to his brother and then ensuring that the on-duty jail officer heard it. *Id.* ("Jones's false statement has no rational purpose but to influence his brother's memory and hinder any potential investigation.").

*Magistrate's ruling.*⁵ After hearing the preliminary hearing evidence, the magistrate granted Jones's motion to dismiss all charges. R75-85. The magistrate refused to bind over on official misconduct because—although Jones had conceded that as a police officer he was a public servant—he found that Jones had not gone to the house as a police officer. Rather, he had gone to the house as a brother. R80. Though the magistrate acknowledged that Jones was in uniform, on duty, and driving his police car, he dismissed the import of that evidence because Darcy called him on his personal cell phone and he went "a few minutes before the end of his shift." *Id.* The magistrate opined that if Jones had appeared "at a stranger's door," the State's argument "might have some merit." *Id.* The magistrate concluded that because Jones was not then acting as a police officer, he was not a public servant with any legal duties to carry out. R80-82. The magistrate also found "no evidence" that Jones was "respond[ing] to an

⁵ The Magistrate's bindover ruling is attached as Addendum E.

allegation of domestic violence,” Utah Code Ann. § 77-36-2.1(1), reasoning that Darcy’s phone call did not mention domestic violence, there was “no altercation in progress when he arrived,” and “no sign of a previous altercation.” *Id.* at 80-82.

The magistrate refused to bind over on witness tampering because he concluded that nothing showed that Jones believed an investigation into his conduct was pending or that he intended to prevent an investigation. R83. The magistrate did not address the alternative “intent to prevent an investigation” element. R82-83. On the element of “induc[ing] another to testify or inform falsely” or “withhold” information or testimony, the magistrate reasoned that Travis’s being awake or asleep had nothing to do with whether Jones had complied with the Act because, the magistrate believed, the only statutory duty at issue was Jones’s failure to give Darcy victim information, which rendered Jones’s lie to Travis “immaterial.” R83-84.

Court of appeals decision. The State appealed the dismissal, and the court of appeals affirmed.

On the official misconduct count, the court of appeals agreed with the magistrate that Jones was not acting as a police officer—and therefore not as a public servant—when he responded to (and while he was at) his brother’s

house. *Jones*, 2014 UT App 142, ¶28. The court of appeals acknowledged that some evidence “viewed in isolation” – such as Jones’s being on duty, in uniform, and driving his patrol car – could support an inference that Jones was acting as a police officer when he first “became aware” of a domestic violence allegation. *Id.* at ¶¶22, 24, 28. But instead of adopting this prosecution-friendly inference, the court of appeals found it unreasonable in light of the “totality of the evidence.” *Id.* at ¶¶24, 28, 33. The court instead adopted a defense-friendly inference, under the “totality of the evidence,” that Jones was not acting as a police officer, but “solely as a family member,” when he responded to his brother’s home. *Id.* at ¶¶24, 33. The court of appeals drew this inference from the fact that once Jones learned of the domestic violence allegation, he – with the victim’s assent – decided not to “spring into action” or to “treat the situation as a law enforcement matter.” *Id.* at ¶¶24, 28, 33.

The court of appeals also agreed with the magistrate that because Jones did not make an “official police response,” he had not “responded” to a domestic violence report for purposes of the Act, and that the Act’s requirements were therefore not triggered. *Id.* at ¶21. Though the court of appeals agreed with the State that “the Act is not limited to situations where a call to authorities specifically alleges domestic violence,” it did not find an

“official” response here because Darcy called Jones on his personal cell phone and both Jones and Darcy told the investigator that Jones was not called in his official capacity. Therefore, the court reasoned, his response was “solely in his capacity as Travis’s brother.” *Id.* at ¶¶21 n.6, 22-24.

In reaching this conclusion, the court took “some guidance” from two cases that neither the magistrate nor the parties had cited: *State v. Gardiner*, 814 P.2d 568 (Utah 1991) and *Salt Lake City v. Christensen*, 2007 UT App 254, 167 P.3d 496. The majority believed that *Gardiner* and *Christensen* stood for the proposition that whether an officer is on duty is not dispositive of whether he is acting as an officer. Rather, the question was whether an officer was acting as an officer or was on a “personal frolic.” *Jones*, 2014 UT App 142, ¶28. Because the majority believed that Jones was acting as a brother rather than an officer, it characterized his on-duty, in-uniform response in his patrol car as a “personal frolic to attend to family matters.” *Id.* at ¶¶20, 28.

Judge Christiansen dissented from this part of the opinion. She reasoned that even if Jones was not initially responding to a report of domestic violence, Darcy’s later allegation that Travis had kicked her triggered Jones’s duties as a police officer under the Cohabitant Abuse Act. *Id.* at ¶42. Judge Christensen read the Act as removing “some of the

discretion a police officer” otherwise might have “in responding to allegations of domestic violence” by requiring “certain procedures on the part of those police officers.” *Id.* Because—as all agreed, *id.* at ¶14 n.4—Jones had not complied with the Act, Judge Christensen would have bound over on the official misconduct charge. *Id.* at ¶42.

The court unanimously affirmed the magistrate on the witness tampering count. On the believing-an-investigation-was-pending prong, the court declined to infer that Travis’s later arrest on domestic violence charges “would have necessarily led to an investigation of Jones’s actions,” even though it acknowledged that the inference was a “reasonable” one. *Id.* at ¶32. Rather, based on its prior holding that the “totality of the evidence” showed that Jones was on a “personal frolic,” it concluded that Jones could not have believed that an investigation into his actions was likely. *Id.* at ¶33. By reiterating its prior holding that Jones had no duties with which to comply, the court of appeals implicitly held that he had no reason to expect an investigation into what he did or did not do.

The court of appeals also refused to infer Jones’s belief in a pending investigation from the fact that he lied to Travis at the jail. *Id.* at ¶34. Rather, court of appeals chose the “just as likely” inference that Jones lied as a social courtesy—presumably to avoid an awkward conversation with his

brother. *Id.* at ¶36. The court stated that it might have adopted the State's proposed inference if there were "independent evidence" to support it. *Id.* But because Jones's belief in an investigation was "not the only possible explanation of Jones's" lie, the inference that Jones lied because he believed an investigation was pending was "speculation rather than reasoned and logical deduction." *Id.* at ¶¶33-36. Like the magistrate, the court of appeals did not address the "intent to prevent an investigation" prong of witness tampering. The court of appeals also did not reach the question of whether Jones had tried to induce his brother to testify or inform falsely.

The State timely sought a writ of certiorari, which this Court granted. Order of November 25, 2014.

SUMMARY OF ARGUMENT

At preliminary hearing, magistrates consider the full evidentiary picture before them in deciding what inferences from the evidence are reasonable. But this Court made clear in *State v. Maughan* that considering the "totality of the evidence" is not license to weigh the relative merits of reasonable inferences. Yet that is precisely what the court of appeals did here when it refused to adopt the State's reasonable inferences in favor of other inferences it deemed "just as likely" or more likely in light of the "totality of the evidence."

Official misconduct. To show probable cause for official misconduct, the State had to present evidence which supported reasonable inferences that Jones (1) was a public servant; (2) who "knowingly refrain[ed] from performing a duty imposed on him by law"; (3) "with intent to benefit himself or another."

The State presented evidence that Jones was the Kamas City police chief; his brother's girlfriend called and asked him to "take care of" his brother; he immediately responded to this call while on duty, in uniform and in his police cruiser; he knew that his brother and the girlfriend had a history of domestic violence; he knew that his brother abused alcohol and when doing so became violent; his brother was drunk when Jones arrived; both his brother and the girlfriend alleged domestic violence while Jones was present; he investigated the allegations and found his brother's allegation to be false; and he did not comply with the requirements imposed on police officers under the Cohabitant Abuse Procedures Act.

This evidence gave rise to the reasonable inferences that Jones was acting as a police officer and not just a brother; Jones had a duty to—but did not—comply with the Act; and that Jones swept his brother's wrongdoing under the rug to benefit himself and/or his brother.

Rather than drawing these reasonable inferences in favor of the prosecution, the court of appeals weighed competing inferences under the “totality of the evidence” and determined that other inferences were more reasonable. For example, the court of appeals refused to adopt the reasonable inference that Jones was acting as a police officer. Instead, it gave greater weight to the competing inference that Jones was at the house merely as a brother because the girlfriend had called Jones on his personal cell phone and did not want the brother arrested. It also improperly disregarded Jones’s statement to a jail deputy that the girlfriend had called Jones and asked him to “take care of” his brother, focusing instead on Jones’s later self-serving statement to investigators that the girlfriend did not say why she wanted him to come.

In holding as it did, the court of appeals effectively rendered an officer’s duties in domestic violence cases discretionary, which undermines the legislature’s purpose in passing the Cohabitant Abuse Procedures Act.

Witness tampering. To show probable cause for witness tampering, the State needed to present evidence and reasonable inferences that Jones (1) believed “that an official proceeding or investigation [was] pending or about to be instituted” or “inten[ded] to prevent an official proceeding or investigation”; and (2) “attemp[ed] to induce or otherwise cause another

person to" either "testify or inform falsely" or "withhold any testimony [or] information."

The State presented evidence that Jones knew that sheriff's deputies responded to Travis's home 45 minutes after Jones left and arrested his brother for domestic violence; the deputies saw an injury to the girlfriend's leg; Jones did not comply with his duties under the Act; Jones went to visit his brother in jail the next day; and Jones lied to his brother and the jail deputy, saying that his brother had been asleep the whole time that Jones was there. If investigators believed that Travis had been asleep the whole time, they would have had no basis for believing that Jones had violated the Act. And the existence of this case showed that there in fact was an investigation into Jones's conduct.

The court of appeals again failed to draw reasonable inferences in favor of the State—for example, that Jones believed his failure to comply with the Act would or could come under investigation, or that he at least wanted to prevent any investigation into it. Instead, the court of appeals believed that the "totality of the evidence" showed that Jones was acting as a brother, not a police officer, and thus had no reason to fear an investigation into his failures. As for Jones's lie itself, the court of appeals

refused to adopt the State's reasonable inference that by lying, Jones was trying to convince his brother to repeat the lie to investigators.

The court of appeals twice erred on this count by (1) analyzing the lie under only one alternative of the first prong of witness tampering—that is, whether the lie showed that Jones believed an investigation into his conduct was pending; and (2) rejecting a reasonable inference in favor of bindover on the basis that it was “just as likely” that Jones lied to his brother as a social courtesy.

This Court should reverse and order the magistrate to bind over Jones on official misconduct and witness tampering.

ARGUMENT

I.

The court of appeals erred in this case—just as it did in *State v. Maughan*—by weighing competing reasonable inferences.

The court of appeals here repeated the same error that it made in *State v. Maughan*, 2013 UT 37, ¶17, 305 P.3d 1058: searching the “totality of the evidence” to find what it considered to be the most reasonable inferences from the evidence.

Though courts certainly consider the entire evidentiary picture at preliminary hearings, this Court made clear in *Maughan* that this is not license to weigh competing reasonable inferences and to reject those that

run in the State's favor. This Court should reverse and reaffirm the proper standard articulated in *Maughan*.

A. Though courts look to the "totality of evidence" at preliminary hearings, this does not permit them to weigh competing reasonable inferences.

"To bind a defendant over for trial, the State must show 'probable cause' at a preliminary hearing by 'present[ing] sufficient evidence to establish that the crime charged has been committed and that the defendant has committed it.'" *State v. Clark*, 2001 UT 9, ¶10, 20 P.3d 300 (citations omitted). The probable cause standard is "relatively low" – the same as that for obtaining an arrest warrant. *Id.* at ¶¶10, 16 (quotation and citation omitted); *see also State v. Virgin*, 2006 UT 29, ¶18, 137 P.3d 787. Under both standards, the prosecution must present evidence sufficient only to "support a reasonable belief" that the defendant committed each element of the charged crime. *State v. Ramirez*, 2012 UT 59, ¶9, 289 P.3d 444 (quoting *Virgin*, 2006 UT 29, ¶17). When determining probable cause, a magistrate "must view all the evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." *Clark*, 2001 UT 9, ¶10 (quotation and citations omitted); *see also Virgin*, 2006 UT 29, ¶24 (same); *State v. Hawatmeh*, 2001 UT 51, ¶3, 26 P.3d 223 (same).

An inference differs from speculation in that for an inference, there is a “foundation in the evidence upon which the ultimate conclusion is based; in the case of speculation, there is no underlying evidence to support the conclusion.” *State v. Garcia-Vargas*, 2012 UT App 270, ¶17 n.5, 287 P.3d 474 (quoting *Harding v. Atlas Title Ins. Agency, Inc.*, 2012 UT App 236, ¶7, 285 P.3d 1260).

An inference is reasonable if a “reasonable jury could accept it.” *Ramirez*, 2012 UT 59, ¶14 (citing *Virgin*, 2006 UT 29, ¶22). This includes inferences based on circumstantial evidence—which is often the only kind of evidence available. See *Maughan*, 2013 UT 37, ¶15; *Ramirez*, 2012 UT 59, ¶12. An inference is unreasonable only if it falls “to a ‘level of inconsistency or incredibility’ that no reasonable jury could accept it.” *Ramirez*, 2012 UT 59, ¶14 (quoting *Virgin*, 2006 UT 29, ¶22). Because the existence of probable cause is such a fact-intensive issue, the reasonableness of a given inference will depend upon the “totality of the circumstances.” *In re I.R.C.*, 2010 UT 41, ¶22, 232 P.3d 1040.

But considering the totality of the evidence “does not encompass an assessment of whether [one] inference is more plausible than” another. *Ramirez*, 2012 UT 59, ¶10. The “bindover standard does not call for an evaluation of the totality of the evidence in search of the most reasonable

inference to be drawn therefrom.” *Maughan*, 2013 UT 37, ¶17. Indeed, a court must accept a prosecution-friendly reasonable inference even where a defense-friendly inference appears *more* likely in light of the “totality of the evidence.” *Maughan*, 2013 UT 37, ¶17; *see also Ramirez*, 2012 UT 59, ¶9-10. Where there are competing, conflicting inferences, the magistrate must accept the prosecution-friendly inferences and reject the defense-friendly inferences. *See, e.g., Hawatmeh*, 2001 UT 51, ¶20 (reversing refusal to bind over “[a]lthough defendants’ characterizations of the facts may also be plausibly inferred from the evidence”).

As this Court has repeatedly recognized, preventing magistrates from weighing the merits of competing reasonable inferences protects the jury’s role. *See, e.g., Maughan*, 2013 UT 37, ¶21 (citing *Ramirez*, 2012 UT 59, ¶10). When a court looks to the “totality of the evidence” to choose among competing inferences, it usurps the jury’s role and “overstep[s] [its] bounds.” *Maughan*, 2013 UT 37 ¶16.

Drawing inferences is an exercise in logic, and formal logic illustrates the different roles of magistrate and jury. The magistrate’s task of drawing inferences is a matter of inductive logical reasoning—taking a set of premises (pieces of evidence) and determining what possible reasonable conclusions may be drawn from them. *See generally* James Hawthorne,

Inductive Logic, Stanford Encyclopedia of Philosophy (Oct. 29, 2012) <http://plato.stanford.edu/entries/logic-inductive/>. Thus, an “inductive logic is a system of evidential support that extends deductive logic to less-than-certain inferences.” *Id.* For example, consider the following premises:

- (1) Adam has smiled a lot today.
- (2) Adam has not frowned at all today.
- (3) Adam has said many nice things to people today, and no unfriendly things.
- (4) Adam’s dog died today.

(Modified from Paul Teller, *A Modern Formal Logic Primer, Volume I: Sentence Logic* 2 (1989); available at tellerprimer.ucdavis.edu/pdf/1ch1.pdf (last accessed February 4, 2015)). There are a number of conflicting reasonable inferences that can be drawn from this evidence, including: Adam is happy that his dog died; Adam is happy for another reason, even though he knows his dog died; Adam is in denial about his dog’s death; Adam is really sad that his dog died and is feigning happiness; or Adam does not yet know that his dog died.

In many cases, magistrates are faced with alternative and similarly conflicting inferences from the evidence. But at the preliminary hearing stage, the magistrate merely asks whether an inference supporting guilt is reasonable. If it is, the magistrate must adopt it. To add to the example above: if Adam ran over his dog and were charged with the dog’s death, the

magistrate would have to adopt the reasonable inference in support of guilt—that Adam is happy that his dog died, which supports a guilty mental state—even though other inferences may be appear to be just as reasonable or even more reasonable.

The jury's task, on the other hand, is a matter of abductive logical reasoning—actually choosing which inference(s) best explain the evidence. Igor Douven, *Abduction*, Stanford Encyclopedia of Philosophy (Mar. 9, 2011) <http://plato.stanford.edu/entries/abduction/> (citing sources for proposition that “trust in other people's testimony . . . has been said to rest on abductive reasoning”). To again use the example of Adam and his dog, it would be up to a jury to decide how Adam actually felt about his dog's death, and whether he intended it.

Preserving these distinct roles is important in a system of increasing burdens. Probable cause is about reasonable possibilities, and preliminary hearings exist only to “ferret out groundless and improvident prosecutions.” *Virgin*, 2006 UT 29, ¶20. If a reasonable inference supports bindover, then the prosecution is by definition not “groundless,” and the matter proceeds to the next stage.

Guilt is about the truth, which the State must prove at trial beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). When a magistrate

chooses what he believes is the *most* reasonable inference, he in effect decides what the truth is. This effectively raises the State's burden at preliminary hearing to guilt beyond a reasonable doubt—a burden that the State manifestly does not bear at that stage. *Ramirez*, 2012 UT 59, ¶9 (“[T]o justify binding a defendant over for trial, the prosecution need not present evidence capable of supporting a finding of guilt beyond a reasonable doubt.”) (citation and quotation omitted).

Recognition of these differing roles is apparent—if unexpressed—in setting different standards of review for bindover and jury decisions. Magistrates get “limited” or no deference because, absent credibility findings, the appellate court is in just as good of a position as they are to reason inductively. *Cf. Ramirez*, 2012 UT 59, ¶7 (explaining that magistrate’s ability to make credibility findings is “limited,” which limits bindover discretion).

Juries get near-absolute deference because they are uniquely tasked with determining guilt, which relies on abductive reasoning. Courts lack a set of agreed-upon standards by which to judge abductive reasoning, because though “there exists a great deal of practical wisdom about how to evaluate” the relative merits of inferences, “no one has been able to formulate the exact theory which tells us exactly when an [inference] is

really good.” Teller at 3. Thus—absent a flagrant due process violation such as deciding guilt on a coin toss—appellate courts do not review a jury’s reasoning, only whether there is a rational basis for the verdict. *See generally State v. Jones*, 2015 UT 19, ¶68, __ Utah Adv. Rep. __ (explaining that review of jury verdicts is “highly deferential”).

Maughan makes plain that at preliminary hearings, magistrates may not reason abductively—that is, choose among reasonable inferences which it believes best explains the evidence. 2013 UT 37, ¶14. Maughan and his friend Glenn Griffin were charged with aggravated murder. *Id.* at ¶¶3-4, 15. Maughan was initially cooperative with police and implicated Griffin in the murder. *Id.* at ¶¶4, 9. Griffin was tried first. The State granted Maughan use immunity and called him as a witness at Griffin’s trial. *Id.* at ¶5. But Maughan refused to testify against Griffin, even after the court informed him that he risked a finding of contempt or prosecution for obstruction of justice. *Id.* at ¶6.

The State charged Maughan with obstruction justice for refusing to testify. *Id.* at ¶1. After a preliminary hearing, the magistrate refused to bind over because, in its view, the State presented no evidence that Maughan acted to obstruct Griffin’s prosecution. *Id.* at ¶8. Rather, the magistrate

believed that Maughan had acted to benefit himself by not giving incriminating testimony before his own trial. *Id.* at ¶9.

The State appealed, and the court of appeals affirmed. Though the court of appeals agreed with the State that it had presented some evidence that Maughan acted to benefit Griffin, it believed that the more reasonable inference was the one the magistrate adopted—that Maughan acted to benefit himself. *Id.* at ¶11.

This Court unanimously reversed, holding that that there was “no room in the liberal bindover standard for second-guessing the reasonableness of” a state-friendly inference, and that “evidence of a friendship between Maughan and Griffin supported a reasonable inference that Maughan wished to impede Griffin’s prosecution.” *Id.* at ¶¶13, 15. This Court also explicitly rejected a totality analysis: “[I]t may be arguable that the ‘totality of the evidence’ even weighs in favor of the conclusion” put forth by defense counsel, “[b]ut our bindover standard does not call for an evaluation of the totality of the evidence in search of the most reasonable inference to be drawn therefrom.” *Id.* at ¶17.

The court of appeals has fallen into that error here. It began by citing *State v. Graham*, 2013 UT App 109, 302 P.3d 824, for the proposition that it “evaluate[s] proposed inferences under the totality of the circumstances, not

just those circumstances that support the inference.” *Jones*, 2014 UT App 142, ¶22. That may be true where a magistrate is deciding the reasonableness of an inference by reasoning inductively. But it does not give the magistrate license to weigh the inferences by reasoning abductively. Indeed, the *Graham* court itself recognized this, citing this Court’s decision in *I.R.C.* for the proposition that courts may only decline bindover “when the evidence, considered under the totality of the circumstances, ‘is wholly lacking and incapable of reasonable inference to prove some issue which supports the [prosecution’s] claim.’” 2013 UT App 109, ¶9 (quoting *I.R.C.*, 2010 UT 41, ¶22).

B. Because the court of appeals weighed competing reasonable inferences, it erroneously rejected reasonable inferences that established probable cause for the charged offenses.

Rather than looking to the totality of the evidence to determine whether an inference was reasonable, the court of appeals looked to the totality to determine which inferences were *most* reasonable. That is precisely what this Court forbade in *Maughan*. Viewed in the proper light, the evidence here permits reasonable inferences that Jones committed both official misconduct and witness tampering.

1. **There was probable cause for official misconduct because it is reasonable to infer that Defendant received an allegation of domestic violence while on duty, yet failed to act on it.**

For purposes of this case, official misconduct required evidence that Jones (1) was a public servant who (2) “knowingly refrain[ed] from performing a duty imposed on him by law” (3) “with an intent to benefit himself or another.” Utah Code Ann. § 76-8-201. Jones conceded in the trial court that a police officer qualifies as a public servant. R44.

Public servant element. The State presented evidence that Jones was on duty, in uniform, and driving his police cruiser when he responded to Travis’s house that night; Jones responded immediately to Darcy’s call; Darcy called him to “take care of” Travis; when Jones arrived, he separated Travis and Darcy to investigate what happened; Travis alleged that Darcy scratched him; Darcy insisted that Travis scratched himself and alleged that Travis had kicked Darcy in the leg; Travis admitted to scratching himself; and Jones did not arrest or cite Travis, write a report of the incident, or give Darcy any victim information. R29:3-7, 14, 56-57; State’s Exh. 1 at 3-5, 7, 9.

This evidence supports the reasonable inference that Jones was acting as a police officer when he went to his brother’s house and heard allegations of domestic violence, thereby satisfying the first element. Indeed, the court of appeals correctly held that Darcy made an “allegation of domestic

violence” to Jones. See *Jones*, 2014 UT App 142, ¶28; cf. *Coffey v. Superior Court of Sacramento County*, 82 P. 75, 77 (Cal. 1905) (permitting prosecution of city police chief for failure to enforce gambling laws where he had “knowledge of the facts calling for official action”). And that Jones went immediately gives rise to the reasonable inference that Jones perceived the situation to be more urgent than he later would have had the investigators believe.

Duty element. The evidence also supports the reasonable inference that Darcy’s allegations—combined with Jones’s knowledge of Travis’s history of drunken violence with Darcy—triggered Jones’s duties under the Act. There was thus probable cause to believe that Jones had failed to comply with a duty imposed on him by law, which satisfied the second element. See Utah Code Ann. § 76-8-201.

The court of appeals acknowledged that the State presented evidence that Jones was acting “in a law enforcement capacity”: he was “on duty, in uniform, and driving a police vehicle;” he “responded immediately to [Darcy’s] call rather than waiting the fifteen minutes until he went off duty;” and he “investigated the incident at Travis’s house ‘as a police officer would.’” *Jones*, 2014 UT App 142, ¶22. But—just as it had in *Maughan*—it held that this prosecution-friendly inference was unreasonable when

compared with the defense-friendly inference. *Id.* at ¶24. Because it believed that “undisputed testimony” showed that Jones was responding “purely to an unofficial family matter,” the court concluded that Jones was not acting as a public servant, but as a brother, and thus had no legal duties with which to comply. *Id.* at ¶¶22-24.

This was error on two levels. First, it was not “undisputed” that Jones went to his brother’s home merely on family business. Though Jones told investigators that Darcy did not tell him why she wanted him to come over, and that he assumed it was to talk about problems with her son, Jones told the jail deputy that the girlfriend called and asked him to “talk or take care of his brother.” *Compare* R29:3-5, 56-57; State’s Exh. 1 at 3-5 *with* R29:4; State’s Exh. 1 at 5. Both the magistrate and the court of appeals were required to accept that statement as true for purposes of bindover. *Maughan*, 2013 UT 37, ¶17.

Second, the court of appeals turned a totality-of-the-evidence search for *a* reasonable inference into a search for the *most* reasonable inference—conducting an abductive search in the guise of an inductive one. Because it acknowledged that the State’s inference that Jones was acting as an officer had evidentiary support, *Jones*, 2014 UT App 142, ¶22, it should have found this inference reasonable.

In holding that Jones was acting as a brother rather than an officer, the court of appeals relied on cases—which the parties did not cite—discussing the scope of a police officer’s authority. See *Jones*, 2014 UT App 142, ¶¶25-28 (discussing *State v. Gardiner*, 814 P.2d 568 (Utah 1991) and *Salt Lake City v. Christensen*, 2007 UT App 254, 167 P.3d 496). It relied on *Gardiner* and *Christensen* to hold that an officer could engage in a “personal frolic”—and thus act in a non-law enforcement capacity, even when on-duty—provided that he decides not to “spring into action” as an officer. *Jones*, 2014 UT App 142, ¶¶27-28 (citation omitted).

Neither *Gardiner* nor *Christensen* support the court of appeals’ holding. Indeed, if anything, they actually support the State’s proposed inference that Jones was acting in a law enforcement capacity.

In *Gardiner*, officers responded to a noise complaint at the Vernal City Airport and a tip that minors were consuming alcohol. 814 P.2d at 569. When they arrived, they found a party, smelled alcohol, and saw people who appeared to be minors. *Id.* One officer tried to go inside, but Gardiner stopped him and asked if he had a warrant. *Id.* The officer said he did not, but tried to go in anyway. *Id.* Gardiner punched the officer in the face. *Id.* When the officer told Gardiner that he was under arrest, Gardiner again punched him in the face. *Id.*

The State charged Gardiner with, among other things, two counts of assaulting a police officer. *Id.* Gardiner claimed that the officer was attempting an unlawful warrantless entry, and was thus not acting as a police officer. *Id.* This Court disagreed, holding that, even assuming that the entry would have been unlawful, the officer was “acting within the scope of his authority” because he responded to a call complaining of noise and reporting underage drinking; he was “in uniform and on duty” at the time; and he was attempting to perform a police function. *Id.* at 575.

If the officer in *Gardiner* was acting as a police officer, then Jones was—both responded to calls for assistance; both were on duty; both were in uniform; and both performed a police function on arrival.

Likewise, *Christensen*. There, an officer—though in uniform and monitoring a police radio—was working as a security guard at LDS hospital. 2007 UT App 254, ¶3. The officer received word over his radio that Christensen was coming to the emergency room from a domestic violence incident. *Id.* Christensen arrived acting “belligerent, loud, and rude.” *Id.* at ¶4. When the officer and another man tried to subdue him, Christensen “clenched his fists” and “cursed at” one of the men. *Id.* at ¶5. The officer was able to take Christensen to the ground and handcuff him, all

while Christensen swung his fists and kicked his legs at him and the other man. *Id.*

The State charged Christensen with assaulting a police officer. Christensen claimed that the officer was acting as a security guard, and was thus on a "personal frolic." *Id.* at ¶12. The court of appeals disagreed, holding that even though the officer was initially working as a security guard, he acted as a peace officer in subduing Christensen because he "spr[a]ng into action" in order to "preserve law and order." *Id.* at ¶14.

The court of appeals here interpreted this language to mean that an officer could decline to "spring into action," even while on duty. *Jones*, 2014 UT App 142, ¶28. But it cited no affirmative authority for this proposition. Indeed, it is difficult to believe that the *Christensen* court intended such a result where it emphasized that the "'nature of a policeman's job is that he be fit and armed at all times, whether on or off duty, and subject to respond to any call to enforce the laws and preserve the peace,'" and that "'any action taken by him toward that end, even in his official off-duty hours, falls within the performance of his duties as a police officer.'" *Christensen*, 2007 UT App 254, ¶14 (quoting *Banks v. Chicago*, 297 N.E.2d 343, 349 (Ill. App. 1973)).

If this is true where an officer is *off-duty*, it is doubly true where, as here, he is *on-duty*. And as Judge Christiansen recognized in dissent here, even if Jones's response to Travis's home began as a personal frolic, it changed entirely once Darcy alleged that Travis had committed domestic violence against her, triggering Jones's duties under the Act. *Jones*, 2014 UT App 142, ¶¶40-41 (Christiansen, J., dissenting). Indeed, it changed even earlier, when Travis alleged that Darcy had assaulted him. R29:4-6; State's Exh. 1 at 5-7.

Further, the notion that an on-duty officer can decline to "spring into action" to enforce the law is a dangerous one—particularly in the domestic violence context, where an officer's discretion is severely limited—and would undermine the purposes of the Act.

The Act requires that an officer "shall give written notice to the victim, in simple language," describing victim's rights, services, and resources, Utah Code Ann. § 77-36-2.1(2). This protects victims by helping them understand how to escape abusive situations. The Act also requires that officers in domestic violence cases "shall arrest" offenders for whom they have probable cause and "shall submit a detailed, written report specifying the grounds" for their action/inaction. *Id.* at § 77-36-2.2(2), (5). This protects victims by removing abusers, or at least ensuring that they

will answer for their abuse. This is crucial in the domestic violence context, where victims often protect their abusers by lying and refusing to cooperate with law enforcement. *See, e.g., State v. Poole*, 2010 UT 25, 232 P.3d 519 (child sex abuse victim refuses to testify against defendant/father); *State v. Timmerman*, 2009 UT 58, 218 P.3d 590 (spousal rape victim refused to testify against defendant/husband); *State v. Garrido*, 2013 UT App 245, 314 P.3d 1014 (domestic violence victim repeatedly lied and refused to testify against defendant/boyfriend based on fear of retaliation).

The Act's reporting requirements also provide critical information to police. Domestic violence cases present "one of the most potentially dangerous, volatile arrest situations confronting police." *State v. Vallasenor-Meza*, 2005 UT App 65, ¶16, 108 P.3d 123 (citations and quotation omitted). The more complete the record of an offender's and victim's police interactions, the better prepared officers will be able to anticipate problems and seek peaceful resolution of volatile situations. Indeed, the Act requires officers to consider prior complaints and the likelihood of future injury in their investigations, which they cannot adequately do without that background information. *See Utah Code Ann. § 77-36-2.2(3)*.

Legislative history illustrates the importance of requiring on-duty officers to comply with the Act. *See generally Soriano v. Graul*, 2008 UT App

188, ¶18, 186 P.3d 960 (consulting legislative history where it supported plain reading of statute). The Act came about in response to an “epidemic” of domestic violence. House Floor Debate on H.B. 314/S.01, February 21, 1995, at 1:35:10-15.⁶ Lawmakers were concerned about the high number of domestic violence assaults, their effect on children, and the high rate of unreported incidents. *Id.* at 1:32:45, 1:33:51-1:35:07. They passed the Act to combat the root causes of these problems. *Id.* at 1:41:27-47; *see also* House Floor Debate on H.B. 314/S.01, February 22, 1995 at 1:35:02-34.⁷ They later required reporting to provide crucial information to those who study the causes of domestic violence in order to understand and prevent it. *See* Senate Floor debate on S.B. 242, March 5, 2008, at 1:03:30-4:18.⁸

⁶ 1995 General Legislative Session, Representative Marda Dillree, *available at* http://utahlegislature.granicus.com/MediaPlay.php?clip_id=9328&meta_id=406185 (last accessed Feb. 6, 2015).

⁷ 1995 General Legislative Session, Representative Marda Dillree, *available at* http://utahlegislature.graicus.com/MediaPlayer.php?clip_id=9330&meta_id=406212 (last accessed Feb. 6, 2015).

⁸ General Legislative Session, Senator Jon Greiner, *available at* http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=17332&meta_id=512158 (last accessed Feb. 6, 2015).

The legislature also stressed the importance of compliance with the Act to obtain and retain federal grant funds.⁹ See House Floor Debate on H.B. 314/S.01, February 22, 1995, at 23:10-24:25.

In deciding that an on-duty officer could choose not to comply with the arresting, citing, and reporting duties, the court of appeals effectively rendered these mandatory duties discretionary suggestions—even for on-duty officers. This undercuts the legislature’s express desire to remove officer discretion in domestic violence cases, protect and inform victims, and obtain funding to investigate and prosecute offenders—effectively eviscerating the Act.

Intent to benefit element. Though the court of appeals’ holding made reaching the third element unnecessary, the State also showed probable cause that Jones acted “with an intent to benefit himself or another.” Utah Code Ann. § 76-8-201. The State presented evidence that Jones was tired of

⁹ See generally 42 U.S.C. § 13925(b)(6) (requiring state agencies receiving grant funds to provide report detailing use and “additional information as the agency shall require”); Catalog of Federal Domestic Assistance, “Violence Against Women Act Court Training and Improvement Grants,” <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=ed04daa1e78505f2363e13ee0376c74a> (last accessed 4/11/2013) (listing approved uses of grants from United States Department of Justice under the Violence Against Women Act, including “information about perpetrator behavior,” law enforcement training, and “issues relating to victim’s needs”).

dealing with his brother and his domestic violence issues. R29:4-5, 7; State's Exh. 1 at 9. This relationship supported the reasonable inference that Jones acted to benefit himself by sparing himself the time and effort required to comply with the Act, as well as avoiding the potential embarrassment and family friction associated with arresting one's own brother. *Cf. Maughan*, 2013 UT 37, ¶15 (holding that "evidence of a friendship between Maughan and [his co-defendant] supported a reasonable inference that Maughan wished to impede Griffin's prosecution").

The State also presented evidence that Travis had a history of domestic violence and that he and Darcy could not "afford" to have Travis go to jail "again." R29:7; State's Exh. 1 at 8. This supported a reasonable inference that Jones refrained from performing his duties to benefit Travis, who would be spared the time and expense of another arrest and court proceeding, as well as the consequences of an additional domestic violence conviction. *See, e.g.*, 18 U.S.C. §922(d)(9) (2013) (prohibiting gun possession by person convicted of misdemeanor domestic violence); Utah Code Ann. §§ 76-3-204 (setting maximum six month term of imprisonment for class B misdemeanor); 76-3-301 (setting maximum \$1000 fine for class B misdemeanor); 76-5-102 (designating simple assault as class B

misdemeanor); 77-36-1.1 (providing enhanced penalties for subsequent domestic violence convictions).

In sum, the State adduced sufficient evidence to show probable cause that Jones committed official misconduct. The evidence supports the inferences that he acted while on duty, learned of alleged domestic violence, investigated as an officer would, and refused to comply with his statutory duties out of a desire to help himself or others. In holding to the contrary, the court of appeals weighed the relative merits of competing reasonable inferences, usurped the role of the jury, and undermined the purposes of the Cohabitant Abuse Procedures Act.

- 2. There was probable cause for witness tampering because it is reasonable to infer that Defendant lied to his brother in an attempt to get his brother to repeat the lie to investigators.**

As charged in this case, witness tampering has two elements: (1) a belief "that an official proceeding or investigation is pending or about to be instituted" or an "intent to prevent an official proceeding or investigation"; and (2) an "attempt[] to induce or otherwise cause another person to" either "testify or inform falsely" or "withhold any testimony [or] information." Utah Code Ann. § 76-8-508(1)(a)-(b).

Essentially, the statute prohibits efforts to influence another from telling the truth when those efforts are calculated to interfere with the criminal justice process. The statute applies whether or not those efforts are successful, and whether or not the process has started, or will ever start. See *State v. Yanez*, 2002 UT App 50, ¶¶14-15, 42 P.3d 1248 (holding that threat subsection of statute does not require proof of actual or pending investigation, but only proof of “a credible threat of bodily harm to another based on that person’s status—past, present, or future—as a witness”); *State v. Bradley*, 752 P.2d 874, 876-77 (Utah 1985) (“The statute requires no more than a defendant *believe* an official proceeding or investigation to be underway.”); see also *Carlsen v. Morris*, 556 F.Supp. 320, 322 (D. Utah 1982) (“The intent of the statute is to prevent interference with the fair administration of justice . . .”).¹⁰

Both elements concern a defendant’s mental state, which is “rarely susceptible of direct proof,” but may “be inferred from conduct and attendant circumstances in the light of human behavior and experience.” *State v. Brooks*, 631 P.2d 878, 881 (Utah 1981), *overruled on other grounds as*

¹⁰ *Bradley* and *Carlsen* focused solely on the victim’s belief in a pending investigation because the statute did not yet have the alternative element of “intent to prevent an official proceeding or investigation,” which was added in 2004. See 2004 Utah Laws 594-95.

recognized in *State v. Alexander*, 2012 UT 27, ¶32 n.56, 279 P.3d 371. Context matters. For example, “an apparently innocent statement such as, ‘I’d be careful crossing the street if I were you,’ can be merely helpful advice to a senior citizen,” but spoken “in another context it may well be perceived . . . as a threat.” *State v. Spainhower*, 1999 UT App 280, ¶7, 988 P.2d 452 (citation and quotations omitted).

The court of appeals concluded that the State’s proffered inference — that Jones lied to Travis in jail in the hope that Travis would repeat that lie to investigators — was unreasonable in light of “the totality of the evidence.” *Jones*, 2014 UT App 142, ¶¶32-36. The court reasoned that this inference was “not the only possible explanation” for Jones’s lie, and was “speculati[ve]” in the absence of “independent evidence” that Jones knew an investigation into Travis’s conduct would lead to an investigation of Jones’s conduct. *Id.* The court of appeals instead adopted the “just as likely” defense-favorable inference that Jones was politely avoiding conversation about the previous night’s events. *Id.* at ¶¶33-36. In so holding, the court of appeals made the same error that it made in *Maughan*: mischaracterizing as “speculative” what was actually an inference from circumstantial evidence. *See Maughan*, 2013 UT 37, ¶¶11-15; *see also Ramirez*, 2012 UT 59, ¶¶6, 11-12.

Investigation element. The evidence showed that Travis had a history of being a violent drunk and committing domestic violence against Darcy; Jones immediately responded to Darcy's request that he "take care of" Travis; when Jones arrived, Travis was drunk; Darcy said that Travis kicked her and was "out of control"; Travis initially accused Darcy of assaulting him, but soon thereafter admitted having scratched himself and lied to try and get Darcy arrested; and Jones had to put Travis to bed warned the two to stay away from each other. R29:3-7, 7-8, 23, 25, 57; State's Exh. 1 at 3-9, 11, 15-17.

This evidence permits the reasonable inference that Jones had probable cause to believe that Travis assaulted Darcy, thereby triggering the Act's duties. As explained, once an officer has probable cause to believe that an act of domestic violence has occurred, the Act requires an officer to arrest or cite an offender, or write a report explaining why he did not, and provide certain information to the victim. Utah Code Ann. § 77-36-2.2(2)(a). And if a police officer fails to perform a necessary duty, he may face prosecution for official misconduct. *Id.* § 76-8-201.

The State presented evidence that Jones was the Kamas City police chief; Jones did not arrest Travis, cite him, or write a report saying why he did neither; Jones did not provide Darcy with any victim information; and

Jones learned that night that sheriff's deputies arrested Travis for domestic violence and saw injury to Darcy's leg. R29:14, 35-36, 59; State's Exh. 1 at 12, 14.

This evidence supported the reasonable inferences that as a police chief, Jones knew about the Act and his duties; he developed probable cause to believe that Travis committed domestic violence against Darcy; he knew that he should have complied with the Act, but did not; Jones's failures would likely come to light as the sheriff's office investigated Travis, which in turn would prompt an investigation into Jones's handling of the matter; and that an investigation into Jones's failures could result in fines, jail time, and the likely loss of position, thereby giving Jones a motive to try to cover his tracks. The State thus showed probable cause that Jones believed "that an official investigation" was "pending or about to be instituted"—as indeed it was—or at least that he intended to "prevent" such an investigation. Utah Code Ann. § 76-8-508(1).

Inform falsely element. The State also presented evidence that Jones went to visit Travis in jail the next morning; that Jones told both Travis and the jail deputy—contrary to Jones's later statements—that Travis had been asleep while Jones was there the night before. R29:53-57, 63-64. In connection with the totality of other evidence discussed above, this

evidence supports the reasonable inference that Jones lied to Travis—who was likely hung-over, and possibly memory-impaired—in an attempt to get Travis to repeat the lie to investigators.

Jones could have believed that he could prevent an investigation into his own conduct if he could persuade Travis to say that Travis was asleep while Jones was there. If that had been the case, then Jones arguably would not have had probable cause to believe that Travis had committed domestic violence or that there was any reason to believe that Darcy was in any future danger. *See* Utah Code Ann. § 77-36-2.2(2). If Travis had been sleeping as Jones had suggested to him, nothing would have supported Darcy's claim that Travis had kicked her or that she was in any kind of danger, since he claimed he saw no visible injury to Darcy—even though sheriff's deputies saw bruising on her leg 45 minutes later.

And absent probable cause, Jones would not have had a duty to comply with the Act. *See id.* (mandating arrest or citation if probable cause to believe act of domestic violence committed and mandating arrest if probable cause to believe there will be continued violence against alleged victim). The State thus showed probable cause that Jones “attempt[ed] to induce or otherwise cause” Travis to “inform falsely . . . [or] withhold any . . . information.” *Id.* § 76-8-508(1)(a)-(b).

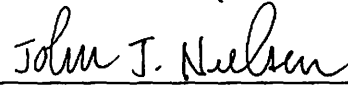
Although the evidence might also support other explanations for Jones's lie to Travis, the court of appeals "jumped the gun" by choosing among those reasonable inferences. *Maughan*, 2013 UT 37, ¶21. The decision of whether the evidence supporting a defense-favorable inference renders the prosecution's theory unworthy of belief should have been left to a jury, not to the magistrate or the court of appeals. *See Virgin*, 2006 UT 29, ¶24 (explaining magistrate duty to view *all* reasonable inferences in favor of prosecution at preliminary hearing stage); *cf. State v. Norton*, 2000 UT App 307U, *1 (holding evidence sufficient for witness tampering even though "there was more than one way a jury could have deciphered defendant's comments"); *Spainhower*, 1999 UT App 280, ¶14 (holding evidence sufficient for witness retaliation where defendant told victim, "I'm going to get you" and followed her through a grocery store).

CONCLUSION

For the foregoing reasons, the Court should reverse and remand with a mandate to the magistrate to bind Jones over on official misconduct and witness tampering.

Respectfully submitted on February 12, 2015.

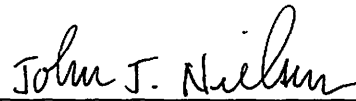
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CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 10,512 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.



JOHN J. NIELSEN
Assistant Attorney General

CERTIFICATE OF SERVICE

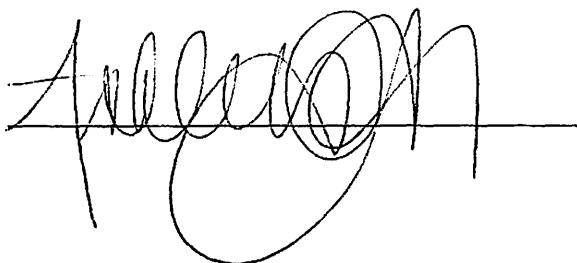
I certify that on February 12, 2015, two copies of the Brief of Petitioner were ☒ mailed ☐ hand-delivered to:

Ronald J. Yengich
175 East 400 South, Suite 400
Salt Lake City, UT 84111

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

A handwritten signature in black ink, appearing to read 'Ronald J. Yengich', written over a horizontal line.

Addenda

Addenda

Addenda

Addendum A

330 P.3d 97
Court of Appeals of Utah.

STATE of Utah, Plaintiff and Appellant,
v.
Adam Howard JONES, Defendant and Appellee.

No. 20120754-CA. | June 19, 2014.

Synopsis

Background: Defendant, a police chief, was charged with official neglect and misconduct, official misconduct, and witness tampering arising from his handling of a call from his brother's girlfriend who had been involved in prior domestic violence incidents with brother. The Third District Court, Silver Summit Department, No. 111500107, L.A. Dever, J., dismissed the charges. State appealed.

Holdings: The Court of Appeals, Greenwood, Senior Judge, sitting by assignment, held that:

[1] evidence was insufficient to bind over defendant on official neglect and misconduct charge;

[2] evidence was insufficient to bind over defendant on official misconduct charge; and

[3] evidence was insufficient to bind over defendant on witness tampering charge.

Affirmed.

Christiansen, J., filed an opinion concurring in part, concurring in the result in part, and dissenting in part.

Attorneys and Law Firms

*98 Sean D. Reyes and John J. Nielsen, for Appellant.

Ronald J. Yengich, for Appellee.

Senior Judge PAMELA T. GREENWOOD authored this Opinion, in which Judge JAMES Z. DAVIS concurred.¹ Judge MICHELE M. CHRISTIANSEN concurred in part, concurred in the result in part, and dissented in part, with opinion.

Opinion

GREENWOOD, Senior Judge:

¶ 1 The State appeals from the magistrate's dismissal of criminal charges against defendant Adam Howard Jones. The State charged Jones with one count of official neglect and misconduct, a class A misdemeanor, *see* Utah Code Ann. § 10-3-826 (LexisNexis 2012); one count of official misconduct, a class B misdemeanor, *see id.* § 76-8-201; and one count of tampering with a witness, a third degree felony, *see id.* § 76-8-508(1). The magistrate dismissed all three counts after a preliminary hearing, determining that there was insufficient evidence to bind Jones over for trial on any of the three counts. We affirm.

BACKGROUND

¶ 2 At the time of the events giving rise to this case, Jones was the police chief of Kamas, Utah. Jones's brother, Travis, lived in Kamas with his girlfriend (Girlfriend). Jones knew that Travis had a history of alcohol abuse and resulting violent behavior and that Travis's alcohol abuse had led to incidents of domestic violence with Girlfriend. In the past, Girlfriend had called Jones for help with Travis when Travis was drunk, although these calls had previously occurred only when Jones was off duty. Some of these calls occurred as much as six years earlier, when Travis and Girlfriend lived in West Valley City. Girlfriend had not called Jones about problems with Travis for approximately one year.

¶ 3 On February 15, 2011, Jones was on duty in his office. His shift was to end at 10:00 p.m. At about 9:45 p.m., Girlfriend called Jones on his personal cell phone and asked him to come to the house that she *99 shared with Travis. Jones later told the State's investigator that he asked Girlfriend why she wanted him to come over, but she did not give him a reason, and that he assumed the call was about problems concerning her son. In any event, Jones immediately left his office, in uniform, and drove his police cruiser the four blocks to Travis's house.

¶ 4 When Jones arrived at the house, he was met by a drunken Travis clad only in his underwear. Travis was calm, although inebriated. Travis pointed to scratch marks on his chest and told Jones, "[L]ook what [Girlfriend] did to me." Jones then located Girlfriend in the garage, where she told Jones, "[Travis] can't do this to me anymore," that Travis

was "out of control," and that he had kicked her in the leg. Jones examined Girlfriend's leg but observed no injury or impairment in her ability to walk.

¶ 5 While Jones and Girlfriend were talking, Travis entered the garage and again accused Girlfriend of scratching his chest. Girlfriend told Jones that Travis had scratched himself and asked Jones to calm Travis down. Jones responded that he could not deal with Travis because the two were brothers and asked Girlfriend if she wanted to call the Summit County Sheriff's Office to file a report. She declined, telling Jones that she was not afraid of Travis. Jones then spoke with Travis alone, and Travis admitted that he had scratched himself in an effort to get Girlfriend arrested.

¶ 6 Travis appeared to be on the verge of passing out, so Jones put him to bed and told the couple to stay away from each other. Jones also told them that if they wanted to make a police report they would have to call the sheriff's office because Jones could not become professionally involved in his own family matters. Jones left Travis's house after being there a total of fifteen to twenty minutes and clocked out from his shift a little after 10:00 p.m. Jones did not arrest or cite Travis, write a report about the incident, or give Girlfriend written notice of her rights as a domestic violence victim.

¶ 7 A short time later, Jones observed on his home computer that sheriff's deputies had been dispatched to Travis's house. When the deputies arrived there, they found Girlfriend crying and obviously distraught, with injuries that included bruising on her leg. Girlfriend's ten-year-old son had also suffered injuries. The deputies arrested Travis, who was loud, vulgar, and very aggressive. Deputies also learned that Jones had been at the house earlier. Jones monitored the situation on his police radio, but the details of what he may have heard are unknown. Later that night, Girlfriend called Jones again. Jones assumed that Girlfriend was calling about Travis and did not answer his phone.

¶ 8 The next morning, Jones went to visit Travis in jail. Travis was in a holding cell near the booking counter, and the sheriff's deputy working at the counter overheard parts of their conversation. Jones told Travis that Jones had been at Travis's house the night before, that Travis was passed out in his bed while Jones was there, and that Travis needed to do something about his drinking. As Jones was leaving, he spoke with the deputy directly about the prior evening's events and repeated his statement that Travis was passed out while Jones was at the house. He also told the deputy that Girlfriend had

indicated in the phone call that he needed to come over to "talk or take care of" Travis.

¶ 9 As a result of these incidents, the State charged Jones with official neglect and misconduct—or, in the alternative, the lesser offense of official misconduct—for his handling of the incident between Travis and Girlfriend on the night of February 15. The State's theory of misconduct under both counts was that Jones had failed to comply with the requirements imposed on law enforcement officers by Utah's Cohabitant Abuse Procedures Act, *see* Utah Code Ann. §§ 77-36-1 to -10 (LexisNexis 2012 & Supp.2013). The State also charged Jones with witness tampering because of his statements to Travis during the jail visit the next morning, where he told Travis that he had been passed out during Jones's visit.

¶ 10 At Jones's preliminary hearing, the State called only three witnesses. Craig Gibson, the State's investigator, testified about *100 his March 7, 2011 interview of Jones, a transcript of which was admitted into the record.² Sheriff's Deputy Richard Jones described his response to the dispatch call from Travis's house on the night of February 15 after Jones had been there. And Sheriff's Deputy Trace Thomsen testified about statements that Jones made to both him and Travis at the jail on the morning of February 16.

¶ 11 After the preliminary hearing, Jones filed a motion to dismiss, which the magistrate granted as to all three counts. In its dismissal order, the magistrate ruled that the State had failed to demonstrate probable cause to believe that Jones had committed any of the three charged crimes. As to the official neglect and misconduct charge, the magistrate ruled that Jones was only alleged to have violated his duty as a police officer, not as a municipal officer as required by Utah Code section 10-3-826, and that the appropriate misconduct charge was therefore official misconduct pursuant to section 76-8-201. As to the official misconduct charge, the magistrate ruled that Jones was under no obligation to comply with the duties imposed upon police officers responding to domestic violence incidents because he went to Travis and Girlfriend's house as a family member, Girlfriend's call did not mention domestic violence, and there was no altercation occurring when Jones arrived at the house. Finally, as to the charge of witness tampering, the magistrate ruled that there was no evidence of one of the elements of the crime: that Jones believed that an official proceeding relating to his actions was pending or about to be initiated at the time he spoke to Travis in the jail. The State appeals from the magistrate's dismissal order.

ISSUE AND STANDARD OF REVIEW

[1] [2] [3] ¶ 12 The State argues that the magistrate erred in dismissing each of the three charges against Jones at the bindover stage. The magistrate's bindover decision "is a mixed determination that is entitled to some limited deference." *State v. Maughan*, 2013 UT 37, ¶ 12, 305 P.3d 1058; *see also State v. Machan*, 2013 UT 72, ¶ 18, 322 P.3d 655 (describing the magistrate's discretion at the bindover stage as "limited discretion"). The State is entitled to have a defendant bound over for trial if it presents "evidence sufficient to support a reasonable belief that the defendant committed the charged crime," and in making its bindover determination the magistrate "must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." *Maughan*, 2013 UT 37, ¶ 14, 305 P.3d 1058 (citations and internal quotation marks omitted).

ANALYSIS

¶ 13 The magistrate dismissed the three counts against Jones on three distinct rationales. We examine each of the magistrate's rulings in turn and determine that each ruling was an appropriate exercise of the magistrate's "limited discretion." *See Machan*, 2013 UT 72, ¶ 18, 322 P.3d 655.

I. Official Neglect and Misconduct

¶ 14 The magistrate first addressed the charge of official neglect and misconduct. Official neglect and misconduct, a class A misdemeanor, occurs when "any municipal officer shall at any time wilfully omit to perform any duty, or wilfully and corruptly be guilty of oppression, malconduct, misfeasance, or malfeasance in office." Utah Code Ann. § 10-3-826 (LexisNexis 2012).³ The State charged Jones with one count of official neglect and misconduct, alleging that, as the Kamas police chief, Jones was a municipal officer and that he failed to perform his duties when he did not comply with the requirements of the Cohabitant Abuse Procedures Act (the Act) while responding to an incident of domestic violence at Travis's *101 house.⁴

¶ 15 In dismissing the official neglect and misconduct charge, the magistrate concluded that Utah Code section 10-3-826 "talks about official neglect and misconduct and encompasses the special functions of the municipal officer" and that "[t]hose types of functions do not relate to the general duties of a police officer." The magistrate also referred to Kamas City Ordinance # 02-1, which governs the Kamas police department,⁵ to determine that Jones was alleged to have violated not his duties as the police chief but rather his general duties as a police officer under paragraph 3 of the ordinance. *See Kamas, Utah, Ordinance # 02-1*, para. 03 (May 28, 2002) (enumerating the additional powers and duties of policemen). Accordingly, the magistrate concluded that the appropriate charge was official misconduct under Utah Code section 76-8-201 and declined to bind Jones over on official neglect and misconduct under section 10-3-826.

[4] ¶ 16 We agree with the magistrate's legal ruling regarding the meaning of the statute and ordinance. There was no evidence that Jones was acting in his capacity as the police chief—i.e., failing to perform a duty arising exclusively from his status as the police chief—when he went to Travis's house on the night of February 15. *Cf. State v. Tolman*, 775 P.2d 422, 425 (Utah Ct.App.1989) (interpreting official misconduct statute to apply only to public servants acting in their capacity as public servants). Any duties under the Act arose only due to Jones's general status as a police officer. *See, e.g., Utah Code Ann. § 77-36-2.1(1)* (LexisNexis 2012) ("A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim...." (emphasis added)). Further, to the extent that Kamas City Ordinance # 02-1 imposed an independent duty on Jones to comply with the Act, that duty applied to *all* Kamas police officers and not exclusively to the police chief. *See Kamas, Utah, Ordinance # 02-1*, para. 03 ("The chief of police and all police officers of the City shall have the following powers and duties....").

[5] ¶ 17 In sum, the magistrate correctly interpreted Utah Code section 10-3-826 as being limited to acts or omissions relating to the special functions of a municipal officer in his or her capacity as a municipal officer. The magistrate also properly determined that there is no evidence that Jones failed to perform any duty imposed upon him by virtue of his status as the Kamas police chief, as opposed to his status as a Kamas police officer or a police officer generally. Accordingly, the magistrate appropriately declined to bind Jones over for trial on the charge of official neglect and misconduct under Utah Code section 10-3-826.

*102 II. Official Misconduct

¶ 18 The magistrate next addressed the State's alternative charge of official misconduct, a class B misdemeanor. *See* Utah Code Ann. § 76–8–201 (LexisNexis 2012). Official misconduct is committed when “[a] public servant ... knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office” and does so “with an intent to benefit himself or another or to harm another.” *See id.* The State's theory of official misconduct against Jones was that he was a public servant by virtue of his status as a police officer, that he failed to comply with his law enforcement duties under the Act when he responded to Girlfriend's allegation of domestic violence against Travis, and that he did so to benefit either himself or Travis.

¶ 19 The magistrate dismissed the official misconduct charge, stating that a police officer's duties under the Act “are predicated on the ... officer responding to an allegation of domestic violence.” The magistrate determined that Jones was not responding to an allegation of domestic violence because Girlfriend called him as Travis's brother, not as a police officer; Girlfriend's call did not mention domestic violence; and there was no ongoing altercation when Jones arrived at Travis's house. The magistrate concluded that “[t]here is no showing that [Jones] was responding to an allegation of domestic abuse, [and] therefore the [Act] and the duties arising under it have no application to [Jones] in this incident.”

[6] ¶ 20 Again, we agree with the magistrate. The Act does not impose its duties on all police officers at all times but rather on police officers who are responding to allegations of domestic violence. *See, e.g.,* Utah Code Ann. § 77–36–2.1(1) (LexisNexis 2012) (“A law enforcement officer *who responds to an allegation of domestic violence* shall use all reasonable means to protect the victim....” (emphasis added)). Further, this court has previously determined that a public servant does not commit the crime of official misconduct unless he or she acts in the “capacity” of a public servant. *See State v. Tolman*, 775 P.2d 422, 425 (Utah Ct.App.1989) (“[T]he prosecution was required to prove that Tolman ... acted in his capacity as a public servant....”). Thus, Jones committed official misconduct under Utah Code section 76–8–201 only if he failed to perform a duty in his “capacity” as a police officer. *See id.*

[7] ¶ 21 Although the Act does not provide a definition of the type of police response that triggers the Act's various duties, a reading of the Act as a whole indicates that it is intended to apply only to official police responses to domestic violence. For example, the Act refers variously to “respond[ing] to an allegation of domestic violence,” Utah Code Ann. § 77–36–2.1(1); “domestic violence call[s],” *id.* § 77–36–2.2(1) (Supp.2013); and “complaints of domestic violence,” *id.* § 77–36–2.2(3). Read in the context of a statute governing the activities of law enforcement officers, the language employed by the legislature indicates that the Act's duties apply only when a police officer is making an official police response to a domestic violence incident.⁶

[8] [9] ¶ 22 The State argues that the circumstances surrounding Jones's visit to Travis's house give rise to a reasonable inference that Jones was responding in a law enforcement capacity. These circumstances include the facts that Jones was on duty, in uniform, and driving a police vehicle; responded immediately to Girlfriend's call rather than waiting the fifteen minutes until he went off duty; and investigated the incident at Travis's house “as a police officer would.” We must accept an inference as reasonable “unless it falls to a level of inconsistency or incredibility that no reasonable jury could accept it.” *State v. Machan*, 2013 UT 72, ¶ 8, 322 P.3d 655 (citation and internal quotation marks omitted). However, we evaluate proposed inferences under the totality of the *103 circumstances, not just those circumstances that support the inference. *See State v. Graham*, 2013 UT App 109, ¶ 9, 302 P.3d 824 (stating that inferences to support a bindover must be evaluated “under the totality of the circumstances”).

¶ 23 The totality of the circumstances of the February 15 incident includes undisputed evidence that Girlfriend called Jones on his personal cell phone and that Jones responded to that personal call solely in his capacity as Travis's brother. Gibson, the State's investigator, testified that he interviewed both Jones and Girlfriend and that both of them indicated that Jones was not called there in his police capacity. Thus, neither Jones nor Girlfriend believed Jones was present as a police officer. The evidence further indicates that Jones informed Girlfriend at the scene that he could not become professionally involved because he was Travis's brother and that Jones repeatedly offered to contact the sheriff's office if Girlfriend desired official law enforcement involvement.

¶ 24 Under the totality of the circumstances, we cannot accept as reasonable the State's proposed inference that

Jones responded to Girlfriend's personal call as a police officer making an official response to a domestic violence call. The undisputed evidence is that Jones was summoned and responded solely as a family member. The evidence that the State relies on—Jones's police uniform and other accoutrements of official involvement—are consistent with an inference of official capacity when viewed in isolation but not when viewed in light of the undisputed testimony that Jones's visit to Travis's house was purely an unofficial family matter. In other words, in light of *all* of the evidence presented to the magistrate, the inference presented by the State “falls to a level of inconsistency or incredibility that no reasonable jury could accept it.” *Machan*, 2013 UT 72, ¶ 8, 322 P.3d 655 (citation and internal quotation marks omitted).

¶ 25 In reaching this conclusion, we take some guidance from two Utah cases addressing the crime of assaulting a peace officer and, in particular, that crime's element that an assaulted officer be “acting within the scope of authority as a peace officer” at the time of the assault. *See* Utah Code Ann. § 76–5–102.4(2)(a) (LexisNexis Supp.2013). In *State v. Gardiner*, 814 P.2d 568 (Utah 1991), a divided supreme court affirmed the defendant's conviction despite the fact that the assault occurred as the defendant was resisting an illegal search by the officer. *See id.* at 570–75. The court held that, despite the illegality of the search the officer was still acting within the scope of his authority at the time of the assault. *See id.* at 575. In analyzing the scope of authority question, the court employed the test of “whether an officer is doing what he or she was employed to do or is ‘engaging in a personal frolic of his [or her] own.’ ” *Id.* at 574 (alteration in original) (quoting *United States v. Heliczzer*, 373 F.2d 241, 245 (2d Cir.1967)).

¶ 26 In *Salt Lake City v. Christensen*, 2007 UT App 254, 167 P.3d 496, this court affirmed a conviction for assaulting a peace officer that arose from a uniformed officer's off-duty employment as a hospital security guard. *Id.* ¶¶ 12–13. The court concluded that the officer was acting within the scope of his authority as a peace officer at the time of the assault despite his private employment status, explaining,

It is true that upon Defendant's arrival at the emergency room, [the officer] was acting as [a hospital] employee and not as a peace officer. But when Defendant took a defensive stance, clenched his fists, and made verbal threats of physical violence, [the officer's] primary role shifted

from that of a security guard to that of a peace officer. It was in his law enforcement capacity that [the officer] took Defendant under control and prevented the escalation of further violence.

Id. ¶ 14. The court ultimately held that “when a law enforcement officer responds to preserve law and order or to detect and deter crime, he is acting ‘within the scope of his authority as a peace officer’ even though he may be working at another job.” *Id.* (citation omitted).

¶ 27 Thus, at least for purposes of the crime of assaulting a peace officer,⁷ we know *104 that even a uniformed, on-duty police officer is not acting within the scope of his law enforcement capacity while he engages in a “personal frolic.” *Gardiner*, 814 P.2d at 574 (citation and internal quotation marks omitted). Conversely, even off-duty officers may act within the scope of their law enforcement capacity when they act “to preserve law and order or to detect and deter crime.” *Christensen*, 2007 UT App 254, ¶ 14, 167 P.3d 496; *see also id.* (“[E]ven peace officers who are ‘off duty’ will typically spring into action when circumstances so require, i.e., when the law has been or is about to be broken.”).

¶ 28 Analyzing the evidence presented below through the lenses of *Gardiner* and *Christensen*, Jones's initial decision to go to Travis's house in response to Girlfriend's personal call can be reasonably characterized only as a personal frolic to attend to family matters. When Jones arrived at the house and became aware of Girlfriend's allegation of domestic violence, he declined to “spring into action” and treat the situation as a law enforcement matter. *See Christensen*, 2007 UT App 254, ¶ 14, 167 P.3d 496. To the contrary, Jones advised Girlfriend that he could not become professionally involved because of his relationship to Travis, and he repeatedly offered to involve the sheriff's office to respond to the incident in an official law enforcement capacity. Girlfriend did not object to Jones's statements and, in fact, endorsed those statements. Furthermore, Jones observed no visible signs of domestic abuse—other than Travis's self-inflicted scratches—and, when Jones left the house, all was calm and Travis was sleeping in his bed. In short, nothing occurred during Jones's visit to the house to convert the incident from a purely personal incident into a law enforcement matter.⁸

¶ 29 For all of these reasons, we agree with the magistrate that it cannot be reasonably inferred from the State's evidence that

Jones's interaction with Travis and Girlfriend on the night of February 15 was anything other than a family matter. Because the evidence below, presented as a whole, does not support a reasonable inference that Jones was responding to a domestic violence allegation in his official capacity, we affirm the magistrate's refusal to bind Jones over for trial on the charge of official misconduct.

III. Witness Tampering

¶ 30 Finally, the magistrate addressed the charge of witness tampering.

A person is guilty of the third degree felony of tampering with a witness if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation, he attempts to induce or otherwise cause another person to ... testify or inform falsely....

Utah Code Ann. § 76-8-508(1) (LexisNexis 2012). The State's theory of witness tampering against Jones was that Jones believed that there would be an official investigation into his handling of the incident with Girlfriend and Travis. Jones then attempted to get Travis to cover up the events of that incident by telling Travis the next morning that he had been passed out during the time that Jones was at his house.

¶ 31 The magistrate dismissed the witness tampering charge after determining that there was no evidence that an official investigation into Jones's actions was pending or *105 about to be instituted at the time he spoke with Travis. Perhaps more importantly, the magistrate found no evidence that Jones *believed* such an investigation was pending. See *Melessa v. Randall*, 121 Fed.Appx. 803, 807 (10th Cir.2005) (interpreting Utah Code section 76-8-508(1) as requiring a defendant's subjective belief "that an official proceeding or investigation is currently pending or will be initiated in the future"); *State v. Bradley*, 752 P.2d 874, 876-77 (Utah 1985) (per curiam) ("The statute requires no more than that a defendant *believe* an official proceeding or investigation to be underway."). In the absence of evidence that Jones believed that an official investigation into his actions at Travis's house was underway or would be initiated in the future, the magistrate concluded that the State had failed

to adequately establish an element of the crime of witness tampering and declined to bind Jones over on that charge.⁹

[10] ¶ 32 On appeal, the State argues that Jones knew that Travis had been arrested for domestic violence shortly after Jones left the house. The State asks us to draw a reasonable inference that the resulting investigation of Travis would have necessarily led to an investigation of Jones's actions. The State also argues that the evidence that Jones "falsely told a certainly hung over and possibly memory-impaired Travis" that he was passed out during the incident gives rise to a reasonable inference that Jones wanted Travis to repeat the lie to investigators. We cannot accept either of the State's proposed inferences.

¶ 33 As discussed above, the totality of the evidence presented at the preliminary hearing shows that Jones went to Travis's house on the evening of February 15 solely on a family matter or "personal frolic" that did not constitute an official response to a domestic violence allegation. See *State v. Gardiner*, 814 P.2d 568, 574 (Utah 1991) (citation and internal quotation marks omitted). Further, there is nothing in the evidence to support an inference that, at any time during Jones's visit, his "primary role shifted from that of a [family member] to that of a peace officer." See *Salt Lake City v. Christensen*, 2007 UT App 254, ¶ 14, 167 P.3d 496. Thus, the mere fact that Jones knew of both his own actions and Travis's domestic violence arrest provided Jones with no reason to believe that *his* actions were likely to be the subject of any sort of official investigation. We cannot infer Jones's belief of an official investigation from his actions when—based on the evidence presented below—those actions did not constitute a crime or otherwise suggest the likelihood of an investigation.

¶ 34 We also cannot agree that the mere fact that Jones told Travis that he was passed out gives rise to a reasonable inference that Jones believed an investigation was impending. See generally *State v. Garcia-Vargas*, 2012 UT App 270, ¶ 17 n. 5, 287 P.3d 474 ("[A]n inference is a deduction as to the existence of a fact which human experience teaches us can reasonably and logically be drawn from proof of other facts." (alteration in original) (citation and internal quotation marks omitted)). If there was some independent reason for Jones to believe that there would be an investigation, then his statement to Travis might give rise to an inference that he lied to Travis in order to impede that investigation. But in the absence of other evidence that Jones believed an investigation was likely, we cannot "reasonably and logically" deduce that

Jones believed that an investigation was pending merely from the evidence that he told Travis that he was passed out. *See id.*

[11] ¶ 35 “Under Utah law, a magistrate is ‘free to decline bindover where the facts presented by the prosecution provide no more than a basis for speculation—as opposed to providing a basis for a reasonable belief.’ ” *State v. Graham*, 2013 UT App 109, ¶ 17, 302 P.3d 824 (quoting *State v. Virgin*, 2006 UT 29, ¶ 21, 137 P.3d 787). “[S]peculation is defined as the ‘act or practice of theorizing about matters over which there is no certain *106 knowledge.’ ” *State v. Hester*, 2000 UT App 159, ¶ 16, 3 P.3d 725 (quoting Black’s Law Dictionary 1407 (7th ed.1999)), *abrogated on other grounds by State v. Clark*, 2001 UT 9, 20 P.3d 300. In the absence of any other evidence that Jones believed that he would be subject to an official investigation, the State’s proposed inference of Jones’s belief from his alleged falsehood to Travis constitutes such speculation.

¶ 36 The State’s proposed inference is also not the only possible explanation of Jones’s statement such that the inference might be supported as the only explanation available. Indeed, it seems just as likely that Jones visited Travis in jail simply to check on his condition and told Travis that he had passed out—which Travis had apparently done before Jones left the house—so as not to prompt a discussion of the prior evening’s events. If there was independent evidence to support the State’s proposed inference, then there would be a question for a jury to resolve. *See State v. Maughan*, 2013 UT 37, ¶¶ 15–21, 305 P.3d 1058. But we see no other evidence to support the theory that Jones sought to impede an investigation of his actions.¹⁰ In the absence of such evidence, the State’s proposed inference asks us to infer Jones’s belief in an investigation merely from the allegation that Jones told a falsehood about the past event that would have been the subject of the purported investigation. This represents speculation rather than reasoned and logical deduction. *See generally Garcia–Vargas*, 2012 UT App 270, ¶ 17 n. 5, 287 P.3d 474 (recognizing the “difference between drawing a reasonable inference and merely speculating about possibilities”).

¶ 37 For these reasons, the magistrate appropriately determined that the State failed to produce evidence that Jones believed that there was, or would be, any official investigation into his actions at the time he made the alleged false statement to Travis. Because belief in a present or pending investigation is an element of the crime of witness tampering as charged

against Jones, the magistrate properly declined to bind Jones over for trial on the witness tampering charge.

CONCLUSION

¶ 38 The magistrate appropriately concluded that the State did not present “evidence sufficient to support a reasonable belief” that Jones violated any official duties during his visit to Travis’s house on February 15 or that he believed that he would face official investigation when he falsely told Travis the next morning that Travis had been passed out during the visit. *See Maughan*, 2013 UT 37, ¶ 14, 305 P.3d 1058 (citation and internal quotation marks omitted). The magistrate therefore acted within its “limited discretion” in dismissing the charges of official neglect and misconduct, official misconduct, and witness tampering against Jones. *See State v. Machan*, 2013 UT 72, ¶ 18, 322 P.3d 655. Accordingly, we affirm the magistrate’s dismissal order.

CHRISTIANSEN, Judge (concurring in part, concurring in the result in part, and dissenting in part):

¶ 39 I concur in the lead opinion’s analysis in Section I regarding official neglect and misconduct in violation of Utah Code section 10–3–826 and concur in the result as to the conclusion reached in Section III regarding witness tampering in violation of Utah Code section 76–8–508(1). I disagree, however, with the lead opinion’s determination in Section II that the magistrate correctly dismissed the charge of official misconduct in violation of Utah Code section 76–8–201, which provides that “[a] public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another, he ... knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.” Utah Code Ann. § 76–8–201 (LexisNexis 2008). The magistrate determined, and the lead opinion agrees, that because Jones did not initially respond as a police officer to his brother’s house on a domestic-violence call but rather as Travis’s brother, and because no altercation occurred in Jones’s presence between *107 Travis and Girlfriend, Jones was not acting in his official capacity as a law enforcement officer and was thus not required to perform the duties imposed on law enforcement officers by the Act. *See id.* § 77–36–2.1(1) (“A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence....”); *id.* § 77–36–2.2(2)(a) (providing that an officer responding to a domestic violence call “shall arrest without a warrant or

shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence"). I respectfully dissent as to Section II.

¶ 40 To begin, I agree that the Act "does not impose its duties on all police officers at all times, but rather on police officers who are responding to allegations of domestic violence." See *supra* ¶ 20. I also agree that the circumstances that prompted Jones's visit to Travis and Girlfriend's house on February 15, 2011, even while he was on duty, in uniform, and traveling in his police vehicle, do not alone give rise to a reasonable inference that Jones was responding in a law enforcement capacity to a domestic-violence call. And I agree that Jones's visit to Travis's house was initially "a purely unofficial family matter." See *supra* ¶ 24. However, I disagree with the magistrate's and the lead opinion's conclusion that, once he arrived at his brother's house and was informed of the situation for which it turns out he had been summoned, Jones did not at that point have a duty to officially respond as a law enforcement officer to Girlfriend's allegation of domestic violence. See *id.* § 77-36-2.1(1).

¶ 41 In my view, the lead opinion incorrectly concludes that "nothing occurred during Jones's visit to the house to convert the incident from a purely personal incident into a law enforcement matter." See *supra* ¶ 28. Rather, what admittedly started out as a "personal frolic" turned into a situation requiring Jones to respond as a law enforcement officer once he discovered the situation at Travis and Girlfriend's house. Specifically, Jones arrived at his brother's residence armed with the knowledge of the violent history between Travis and Girlfriend and of Travis's tendency to become violent after consuming alcohol. Upon his arrival, Jones observed that Travis was intoxicated, found Girlfriend in her car talking on the phone, and learned from Girlfriend that "Travis was out of control," had allegedly kicked Girlfriend in the leg,¹¹ and had harmed himself.¹² Once he received Girlfriend's statement that Travis had allegedly assaulted her, Jones had a

duty as a sworn peace officer "to preserve law and order [and] to detect and deter crime, [and act] within the scope of his authority as a peace officer." *Salt Lake City v. Christensen*, 2007 UT App 254, ¶ 14, 167 P.3d 496 (citation and internal quotation marks omitted). Jones was therefore obligated to discharge his duties under the Act. See Utah Code Ann. §§ 77-36-2.1, -2.2.

¶ 42 In passing the Act, our legislature has removed some of the discretion a police officer has in responding to allegations of domestic violence and has statutorily mandated certain procedures on the part of those police officers. "[B]ecause domestic violence is serious in nature and has a high likelihood of repeated violence, incidents of domestic abuse require the mandatory and immediate attention of law enforcement." *State v. Farrow*, 919 P.2d 50, 54 (Utah Ct.App.1996) (discussing the policy underlying the legislature's enactment of Utah Code title 77, chapter 36, then called the Spouse Abuse Procedures Act); see also Utah Code Ann. § 77-36-2.2(1) ("The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law."). Given the mandatory *108 response required by law, once he became aware of Girlfriend's allegation of domestic violence, Jones had a duty to use all reasonable means to protect her and to prevent further violence between Travis and Girlfriend that night. Whether Jones failed to comply with his law enforcement duties as required by the Act, and whether such failure was committed knowingly and with the intent to benefit himself or Travis, see Utah Code Ann. § 76-8-201, are ultimately questions for the fact-finder. Consequently, I would reverse the magistrate's dismissal of the official misconduct charge and remand for further proceedings. I therefore dissent from the lead opinion on this point.

Parallel Citations

763 Utah Adv. Rep. 53, 2014 UT App 142

Footnotes

- 1 The Honorable Pamela T. Greenwood, Senior Judge, sat by special assignment as authorized by law. See *generally* Utah Code Jud. Admin. R. 11-201(6).
- 2 The interview focused on Jones's actions on the night of February 15, and there were no questions or discussions about his visit to Travis in jail the next morning.
- 3 In addition to constituting a class A misdemeanor, conviction of a municipal officer for official neglect and misconduct also mandates removal from office and ineligibility "for any municipal office thereafter." See Utah Code Ann. § 10-3-826 (LexisNexis 2012).
- 4 The Act imposes various duties on law enforcement officers responding to reports of domestic violence. Among these duties are that "[a] law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim

and prevent further violence,” Utah Code Ann. § 77–36–2.1(1) (LexisNexis 2012), and “shall give written notice to the victim in simple language, describing the rights and remedies available” to the victim under Utah statutes addressing cohabitant abuse and child protective orders, *id.* § 77–36–2.1(2)(a). The Act requires that a law enforcement officer responding to a domestic violence call “shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.” *Id.* § 77–36–2.2(2)(a) (Supp.2013). The Act also imposes certain reporting requirements, including the requirement that an officer “who does not make an arrest after investigating a complaint of domestic violence ... shall submit a detailed, written report specifying the grounds for not arresting any party.” *Id.* § 77–36–2.2(5)(a). Additionally, “[a] law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer’s disposition of the case.” *Id.* § 77–36–2.2(6)(a). It is undisputed in this case that Jones did not give Girlfriend written notice of her rights and remedies, did not arrest or cite Travis for domestic violence, and did not file either a failure-to-arrest report or an incident report.

5 Kamas City Ordinance # 02–1 establishes both the Kamas Police Department and the position of chief of police. *See* Kamas, Utah, Ordinance # 02–1, para. 01 (May 28, 2002). Certain duties under the ordinance are exclusive to the municipal office of police chief, including the duty to “organize, supervise, and be responsible for all the activities of the police department” and to “execute all lawful orders of the Mayor and City Council.” *See id.* para. 02.

6 Although we determine that the Act’s duties are triggered only by official responses to domestic violence, we agree with the State that the Act is not limited to situations where a call to authorities specifically alleges domestic violence. Police officers have many different types of official interactions with the public, and whether any particular incident triggers the Act’s duties depends on the circumstances.

7 In *Christensen*, the court expressly stated,

Questions about the scope of a peace officer’s authority arise in many different contexts, including respondent superior, workers’ compensation, and civil rights cases. We specifically note that our analysis and holding in this case should not be construed as applying in all contexts in which the question of an officer’s authority may arise.

Salt Lake City v. Christensen, 2007 UT App 254, ¶ 13 n. 3, 167 P.3d 496.

8 We note that the officer in *Christensen* was not deemed to be acting in a law enforcement capacity until he reacted to the defendant’s threat of immediate physical violence. *See* 2007 UT App 254, ¶ 14, 167 P.3d 496. The officer initially remained in his unofficial, security guard capacity despite his knowledge that the defendant was a suspect in a recent and serious domestic violence incident. *Id.* ¶ 3. The officer also remained in his unofficial capacity as he endured fifteen to twenty minutes of the defendant’s “obscene outbursts,” twice heard the defendant threaten to kill his brother upon being released from the hospital, and requested police backup due to the defendant’s “large size, belligerent behavior, and the fact that he was a suspect in a domestic violence incident.” *Id.* ¶ 4.

9 The magistrate also ruled that Travis’s potential testimony would have been irrelevant to any investigation into Jones’s actions because Girlfriend was the only witness to Jones’s allegedly improper response to her allegation of domestic violence against Travis. We do not address this portion of the magistrate’s ruling, but we note that Girlfriend and Jones both told the State’s investigator that Travis was awake when Jones arrived at the house.

10 To the contrary, Jones freely discussed the events at Travis’s house with the State’s investigator, including the fact that Travis was *not* passed out when Jones arrived at the house.

11 A criminal assault is, among other things, “an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.” Utah Code Ann. § 76–5–102(1)(c) (LexisNexis 2012). An allegation of a kick in the leg can therefore constitute an allegation of assault.

12 It is less clear what duty Jones may have had in response to Travis’s initial allegation of domestic abuse against Girlfriend, given Travis’s later admission that the allegation was false. *See supra* ¶ 5. However, because Girlfriend’s allegation was sufficient to trigger Jones’s duties under the Act, I express no opinion as to whether Travis’s initial allegations would have also triggered those duties.

Addendum B

West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 8. Offenses Against the Administration of Government
Part 2. Abuse of Office

U.C.A. 1953 § 76-8-201

§ 76-8-201. Official misconduct--Unauthorized acts or failure of duty

Currentness

A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

Credits

Laws 1973, c. 196, § 76-8-201.

Notes of Decisions (1)

U.C.A. 1953 § 76-8-201, UT ST § 76-8-201
Current through 2012 Fourth Special Session.

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West's Utah Code Annotated
Title 76. Utah Criminal Code
Chapter 8. Offenses Against the Administration of Government
Part 5. Falsification in Official Matters (Refs & Annos)

U.C.A. 1953 § 76-8-508

§ 76-8-508. Tampering with witness--Receiving or soliciting a bribe

Currentness

(1) A person is guilty of the third degree felony of tampering with a witness if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation, he attempts to induce or otherwise cause another person to:

- (a) testify or inform falsely;
- (b) withhold any testimony, information, document, or item;
- (c) elude legal process summoning him to provide evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person is guilty of the third degree felony of soliciting or receiving a bribe as a witness if he solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified under Subsection (1).

(3) The offense of tampering with a witness or soliciting or receiving a bribe under this section does not merge with any other substantive offense committed in the course of committing any offense under this section.

Credits

Laws 1973, c. 196, § 76-8-508; Laws 1988, c. 175, § 1; Laws 2000, c. 1, § 115, eff. May 1, 2000; Laws 2004, c. 140, § 3, eff. May 3, 2004.

Notes of Decisions (27)

U.C.A. 1953 § 76-8-508, UT ST § 76-8-508
Current through 2012 Fourth Special Session.

West's Utah Code Annotated

Title 77. Utah Code of Criminal Procedure

Chapter 36. Cohabitant Abuse Procedures Act (Refs & Annos)

U.C.A. 1953 § 77-36-2.1

§ 77-36-2.1. Duties of law enforcement officers--Notice to victims

Currentness

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2)(a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with Subsection 77-36-2.5 (8).

Credits

Laws 1995, c. 300, § 18, eff. July 1, 1995; Laws 1998, c. 13, § 92, eff. May 4, 1998; Laws 2003, c. 68, § 8, eff. May 5, 2003; Laws 2008, c. 3, § 260, eff. Feb. 7, 2008; Laws 2011, c. 113, § 2, eff. May 10, 2011.

U.C.A. 1953 § 77-36-2.1, UT ST § 77-36-2.1

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West's Utah Code Annotated

Title 77. Utah Code of Criminal Procedure

Chapter 36. Cohabitant Abuse Procedures Act (Refs & Annos)

U.C.A. 1953 § 77-36-2.2

§ 77-36-2.2. Powers and duties of law enforcement officers to arrest--
Reports of domestic violence cases--Reports of parties' marital status

Currentness

(1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.

(2)(a) In addition to the arrest powers described in Section 77-7-2, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.

(b)(i) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section.

(ii) For purposes of Subsection (2)(b)(i), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section 76-1-601.

(c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section 77-36-2.1.

(3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:

(a) any prior complaints of domestic violence;

(b) the relative severity of injuries inflicted on each person;

(c) the likelihood of future injury to each of the parties; and

(d) whether one of the parties acted in self defense.

(4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.

(5)(a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting any party or for arresting both parties.

(b) A law enforcement officer who does not make an arrest shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence.

(6)(a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.

(b) From January 1, 2009 until December 31, 2013, any law enforcement officer employed by a city of the first or second class responding to a complaint of domestic violence shall also report, either as a part of an incident report or on a separate form, the following information:

(i) marital status of each of the parties involved;

(ii) social, familial, or legal relationship of the suspect to the victim; and

(iii) whether or not an arrest was made.

(c) The information obtained in Subsection (6)(b):

(i) shall be reported monthly to the department;

(ii) shall be reported as numerical data that contains no personal identifiers; and

(iii) is a public record as defined in Section 63G-2-103.

(d) The incident report shall be made available to the victim, upon request, at no cost.

(e) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.

(7) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.

Credits

Laws 1995, c. 300, § 19, eff. July 1, 1995; Laws 1998, c. 105, § 1, eff. May 4, 1998; Laws 2008, c. 375, § 2, eff. May 5, 2008.

Notes of Decisions (1)

U.C.A. 1953 § 77-36-2.2, UT ST § 77-36-2.2

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Addendum C

IN THE THIRD JUDICIAL DISTRICT COURT, SILVER SUMMIT

SUMMIT COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

ADAM HOWARD JONES,

Defendant.

: Case No. 111500107FS

: THIRD DISTRICT COURT - SUMMIT

:
:
:
:
:
:
:

NOV 30 2011

E-FILED

: With Keyword Index

PRELIMINARY HEARING NOVEMBER 28, 2011

BEFORE

JUDGE L.A. DEVER

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

FILED
UTAH APPELLATE COURTS

JAN 08 2013

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ORIGINAL

APPEARANCES

For the Plaintiff:

MATTHEW D. BATES
Deputy District Attorney

For the Respondent:

RONALD J. YENGICH
Attorney at Law

* * *

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1 SUMMIT COUNTY, UTAH - NOVEMBER 28, 2011

2 JUDGE L. A. DEVER PRESIDING

3 (Transcriber's note: speaker identification
4 may not be accurate with audio recordings.)

5 P R O C E E D I N G S

6 (Whereupon a sidebar was held - inaudible)

7 MR. BATES: We will invoke the exclusionary rule.

8 THE COURT: Okay. Who all is going to be witnesses
9 in this case?

10 MR. BATES: I have three witnesses here, Your Honor.
11 One of them is the case agent, Craig Gibson, and I ask that
12 he be allowed to remain throughout the proceeding.

13 THE COURT: Very well.

14 (Inaudible)

15 THE COURT: You have no witnesses, Mr. Yengich?

16 MR. YENGICH: (Inaudible).

17 THE COURT: Okay. Call your first witness.

18 MR. BATES: The State would call Agent Craig Gibson.

19 (Inaudible conversation)

20 MR. YENGICH: Do you have the amendments to that
21 (inaudible)?

22 MR. BATES: I believe I amended that information
23 [inaudible].

24 MR. YENGICH: If he did so I have no objection to
25 that, Your Honor.

1 THE COURT: Very well.

2 CRAIG GIBSON

3 Having first been duly sworn, testified
4 upon his oath as follows:

5 THE COURT: Please state your name and spell your
6 name for the court clerk.

7 MR. GIBSON: Craig Gibson, C-R-A-I-G G-I-B-S-O-N.

8 THE COURT: Thank you.

9 You may proceed, counsel.

10 DIRECT EXAMINATION

11 BY MR. BATES:

12 Q Agent Gibson, what's your current occupation?

13 A I'm an investigator with the Utah Attorney
14 General's office.

15 Q How long have you been doing that?

16 A Two years.

17 Q What did you do before you were at the Attorney
18 General's office?

19 A Immediately prior I retired, but prior to that that
20 I was in the Layton Police Department for four years, the
21 West Valley Police Department for 20 years, University of
22 Utah for three years, and U.S. Air Force for four years. In
23 law enforcement.

24 Q In law enforcement. So total law enforcement -

25 A Thirty-two years.

1 Q Thirty plus years?

2 A Yes, sir.

3 Q Do you know the defendant in this case, Adam Jones?

4 A I met Chief Jones on March 7th when I interviewed
5 him.

6 Q And what was the subject of your interview?

7 A I was looking into a possible neglected (inaudible)
8 case and wanted to interview Chief Jones regarding his
9 response to a domestic violence case involving his brother
10 and I guess now his sister-in-law.

11 Q Who is Mr. Jones's brother?

12 A Travis Jones.

13 Q Who's his sister-in-law?

14 A Darcy Martinez Jones.

15 Q Let's just start at the beginning of that
16 interview. What kinds of questions - sort of questions did
17 you ask him to start the interview?

18 A I initially wanted to establish whether or not he
19 was on duty, so I asked him if he was on duty, what time his
20 shift began, where he was, how he received a call from Ms.
21 Martinez.

22 Q And what was the date of this incident, if you
23 recall?

24 A It was February 15th.

25 Q And what were the - what were his answers to those

1 questions [inaudible]?

2 A He indicated that he was at his office in Kamas. He
3 received the - a phone call and didn't recognize the number.
4 He answered the phone call, and it was on his personal phone.
5 He - it was Ms. Martinez. She requested that he come over.
6 At the time he thought that he wanted to ask her some - or
7 she wanted to ask him some questions about her son that they
8 were having some problems with, he responded to the home, and
9 when he arrived he found that - they encountered his brother
10 Travis (inaudible).

11 Q Now did he indicate to you whether he was attired
12 in uniform, or if he took his police vehicle or anything of
13 that sort of information?

14 A He did. He indicated that he was in uniform, I -
15 he came to the interview in uniform, so I asked him if he was
16 dressed like he was and he indicated he was. He also
17 indicated that he took his police vehicle (inaudible).

18 Q And did he indicate to you whether he was, in fact,
19 on duty at the time that call came in?

20 A He did say he was, yes.

21 Q What did you ask him next?

22 A Basically went into what he found when he arrived
23 at the home. Wanted to find out what his observations were,
24 who he contacted.

25 Q Did he tell you where this home was at?

1 A He said it was about four blocks from the police
2 department. I had the address on - I'm sure it's in the
3 report, but he said it wasn't very far, it didn't take him
4 that long to get from his office to the home.

5 Q Now, which police department are you talking about?

6 A Kamas Police Department where he is the chief.

7 Q So how did he respond to that question?

8 A He indicated that he met his brother Travis at the
9 door. His observation was that his brother was intoxicated
10 and he said that his brother basically told him to go into
11 the garage and talk to Ms. Martinez and get the story from
12 her about what happened.

13 Q Did he describe his brother's physical appearance
14 to you?

15 A He said he appeared to be intoxicated, I think he
16 used the term drunk. He did note that he had some scratches
17 on his chest. I guess his brother answered the door in his
18 shorts, so he could see the scratches on his chest. He - so
19 he spoke with him and he got a good indication that he did
20 appear to be intoxicated.

21 Q Did he speak with Ms. Martinez?

22 A Yes. He proceeded to the garage, that's where Ms.
23 Martinez was. He spoke with her about her condition.
24 Apparently Ms. Martinez indicated to him that Travis was out
25 of control and that Chief Jones was the person that could

1 talk to him and control him and get him to settle down.

2 Q Did Mr. Jones tell you whether that night when he
3 was investigating this incident, whether Darcy Martinez had
4 reported any kind of assault by Travis Jones?

5 A He did. He said that Ms. Martinez had told him
6 that Travis had kicked her in the leg. He said that he looked
7 at her leg and didn't see any marks and didn't see any damage
8 to any of the car or anything that - they were in the garage
9 and the car was in the garage.

10 Q So how did - did Mr. Jones - I should say Adam
11 Jones tell you how he decided to resolve this case?

12 A He went back in and talked to Travis because of the
13 scratches on the - on Travis's chest. He resolved that issue
14 and found out that Travis had actually self-inflicted the
15 scratches. He -

16 Q Now, did you know why Travis had self-inflicted
17 those scratches?

18 A Apparently what he'd been told was that he wanted
19 to get Darcy in trouble, or Ms. Martinez in trouble, and that
20 was his original purpose, I guess, in placing the scratches
21 on his chest, and so he found out that they were self-
22 inflicted.

23 Q Okay. So what did he decide to do with this case?

24 A He basically put Travis to bed, I believe is what
25 his statement was, and told them that if they wanted police

1 involvement he couldn't get involved because he was Travis's
2 brother, but if they wanted to make a police report or get
3 the police involved, they would need to call Summit County
4 Sheriff's office.

5 Q Okay. Now, did you ask him any questions about his
6 knowledge of Travis's - of Travis and Darcy's history
7 together?

8 A Yes. We discussed - I think Chief Jones seemed to
9 be frustrated with their history together. They have had a
10 history apparently of this type of domestics, and he was - he
11 seemed to be frustrated with both their behaviors. He was
12 aware that when his brother got drunk that he would get
13 violent and had had some past history with those things.

14 Q Okay. Did Mr. Jones indicate whether he was aware
15 that Travis had ever assaulted Darcy before?

16 A I believe he stated he had been aware of assaults
17 in the past. It was some years ago, but yes, he had been
18 aware when they were living I believe in West Valley, he
19 mentioned that when they were in West Valley, he had been
20 called before by them to try to resolve issues.

21 Q Okay. What did Mr. Jones tell you - Mr. Adam Jones
22 tell you about his brother when his brother gets drunk?

23 A He said he can get stupid. He can be violent. He
24 can be unreasonable. He said normally Chief Jones can calm
25 him back down verbally, but he does get - he can get

1 extremely violent. He said that he has told other police
2 agencies or - I don't know if it was Summit County or who he
3 was specifically talking about, but he said that he has told
4 them that he will fight with police and he will run. He had
5 told me that.

6 Q Okay. Now, what did - let's finish that question
7 we started a few minutes ago. What did Chief Jones tell you
8 about how he ended up resolving this situation?

9 A He basically again went back, put them to bed, made
10 sure that - put Travis to bed is how he - put him in his
11 bedroom, put him to bed, told them to stay away from each
12 other, and then left the residence.

13 Q Did he tell you whether he did anything to comply
14 with the requirements of the Co-habitant Abuse Act as far as
15 citing, arresting, writing reports, providing information?

16 A Right, I asked him some questions regarding that
17 because that's obviously the nature of a police officer's
18 duties when they respond to a domestic violence case -

19 MR. YENGICH: Objection. Ask that that be stricken
20 because that is not necessarily what the law says. He can
21 indicate what questions he asked, but can't make the legal
22 conclusion.

23 THE COURT: Sustained.

24 THE WITNESS: Do you want to re-ask that or do you
25 want me to try to re-phrase my answer?

1 MR. BATES: Your Honor?

2 THE COURT: Uh-huh (affirmative).

3 MR. BATES: If I could just respond briefly to
4 counsel's objection.

5 THE COURT: Okay.

6 MR. BATES: This case is not simply about what the
7 law requires. Under the third count that I have filed in
8 this case, it is a criminal act to fail to comply with a duty
9 that is imposed by the law, or a duty that is clearly
10 inherent in the nature of the employment or the office. So I
11 believe it's appropriate for this witness to not only testify
12 about what the Co-habitant Abuse Act requires, but also to
13 testify about what would be inherent and clear as far as the
14 duties of a police officer responding to a domestic violence
15 situation. He's an officer of 30 years' experience. I
16 believe he's qualified to make that sort of testimony.

17 MR. YENGICH: And I object to that, Your Honor. The
18 act itself actually is not as cut and dry as counsel believes
19 it to be, at least in my opinion. He can't indicate what he
20 and other officers should do. He can indicate what this
21 gentleman told him at the time that he interviewed him
22 because he has not been established as an expert on this act,
23 or how an individual should respond, and that was the
24 character of the question, Your Honor.

25 THE COURT: I believe Mr. Yengich is right, Mr.

1 Bates. I don't know if this man has ever investigated a
2 domestic violence matter or not.

3 MR. BATES: Well, I'll lay some foundation.

4 Q (BY MR. BATES) Agent Gibson, during your 30 years
5 of experience as a police officer, how many times did you
6 investigate domestic violence crimes?

7 A I honestly don't know, because I've investigated
8 several.

9 Q Okay. Have you ever received any kind of training
10 on, you know, proper police tactics and procedures in
11 responding to domestic violence crimes?

12 A Yes, sir. Over the years I've received domestic
13 violence training.

14 Q Can you estimate approximately how many hours over
15 how many years?

16 A I honestly can't give you an estimate of the hours
17 I have. Any estimate I would give would be just a guess, and
18 I honestly can't.

19 Q Okay. Can you estimate at least how many times in
20 your career, whether it was on an annual basis or every five
21 years, you might have received domestic violence training?

22 A When I first went to West Valley, the department
23 was piloting a victim's advocate program for a victim's
24 advocate to respond to domestic violence, and so West Valley
25 at that time was very involved in the investigation, and

1 proper investigation, proper handling of domestic violence
2 cases.

3 Q Okay. And did you receive training from West
4 Valley during that time?

5 A Yes, I did.

6 MR. YENGICH: May I voir dire quickly, Your Honor?

7 THE COURT: You may.

8 VOIR DIRE

9 BY MR. YENGICH:

10 Q When did you leave West Valley?

11 A 2004, sir.

12 Q 2004.

13 A Yes, sir.

14 Q You didn't work at West Valley after 2008.

15 A Correct.

16 Q All right, and you've been with the Attorney
17 General's office since when?

18 A Since 2009.

19 Q 2009.

20 MR. YENGICH: It's irrelevant, Your Honor.

21 Everything he did predates this statute.

22 MR. BATES: And Your Honor, this is not just about
23 the statute. The statute is one way to make out this crime.
24 Another way to make out this crime is to demonstrate what is
25 clearly inherent in the duties of the office of a police

1 officer.

2 THE COURT: Why don't we concentrate on what the
3 statute says? Worry about that, okay?

4 MR. BATES: Now, are you referring to the criminal
5 statute at issue here or the Co-habitant Abuse Act?

6 THE COURT: I'm assuming you're referring to count
7 three, aren't you?

8 MR. BATES: Yes. And Your Honor, you have my copy
9 of count three. Perhaps I'm mis-remembering the language of
10 the statute. It requires that I demonstrate that he
11 knowingly refrained from performing the duty imposed on him
12 by law, or clearly inherent in the nature of his office. So
13 I think regardless of whether a particular act is required by
14 the Co-habitant Abuse Act, if there's some function that is
15 clearly inherent in the nature of a police officer, that
16 would be the proper subject of this preliminary examination.

17 MR. YENGICH: The problem with that argument - and I
18 don't mind making this statement in front of the gentlemen -
19 is that there is nothing inherent in performing the duties of
20 an officer, because officers are given general discretion
21 consistently to make determinations on the basis of what they
22 observed at the time. Indeed, I would argue that that's
23 inherent in count three, as well as is inherent in count two,
24 if you read the statute carefully. He can't make a judgment
25 that he believes police officers have to do a particular

1 thing, because it's inherent in their duties to have
2 discretion, and the Court can take judicial knowledge of
3 that.

4 THE COURT: Okay.

5 MR. YENGICH: It happens every day, and the Court
6 hears testimony relative to that every day.

7 MR. BATES: And Your Honor, I think what counsel's
8 asking this Court to do is to substitute its judgment about
9 what proper police procedure is for the judgment of an
10 officer with 30 years' experience.

11 MR. YENGICH: I'm not asking the Court to do that.
12 I'm asking the Court to make a determination that it's not
13 this officer's judgment as to what the purpose behind either
14 count two or three is relative to the determination made by a
15 police officer on the scene. That's what they're attempting
16 to get the Court to do. And that is an opinion that not only
17 has foundation not been adequately laid, it's an opinion that
18 I would submit to the Court is - doesn't fall under the 701
19 and 702 and that sequence of evidentiary rules even at a
20 preliminary hearing because it's speculation on his part.

21 THE COURT: Well, Mr. Bates, I'm going to allow you
22 to have him testify as to what this man did, and what he said
23 he was supposed to do. Okay?

24 MR. BATES: Okay.

25 ///

1 DIRECT EXAMINATION (resumed)

2 BY MR. BATES:

3 Q Agent, will you please describe for the Court what
4 Mr. Jones told you that he either did or did not do relevant
5 to the investigation of this incident on February 15th?

6 A I asked him if he had provided or facilitated
7 medical attention for either his brother Travis or Ms.
8 Martinez and he indicated he had not. I asked him if he had
9 provided written material to either his brother or Mr.
10 Martinez regarding options available to them for victim's
11 assistance and he said he did not. I asked him if he
12 completed a report when he left the area, and he indicated
13 that he did not.

14 Q And did you ask him whether he had either cited or
15 arrested Travis Jones based on this incident?

16 A I don't remember asking him specifically if he
17 cited or arrested him, but he told me that he put him to bed
18 and left. So I don't know that I specifically asked him if
19 he cited or arrested either party. I don't think I did.

20 MR. BATES: Can I have just a moment, Your Honor?

21 THE COURT: Uh-huh (affirmative).

22 MR. BATES: Your Honor, that's all the questions I
23 have of this witness right now.

24 THE COURT: (Inaudible).

25 ///

CROSS EXAMINATION

BY MR. YENGICH:

Q Good afternoon.

A Mr. Yengich.

Q You never interviewed Darcy, am I correct in that?

A I did interview Darcy.

Q You - were you -

A Yes, sir

Q - you were the interviewer, or were you present for the interview?

A I actually was the interviewer.

Q You were the interviewer.

A It was a co-interview, but I was the primary interviewer, if that helps.

Q Okay. All right, but you interviewed Adam first, am I correct?

A No, no. I interviewed Darcy first.

Q First? Okay.

A Ms. Martinez first.

Q I got that wrong. When you interviewed Adam, the defendant in this case, he said he got a call from Darcy on his private phone; is that correct?

A That's correct.

Q All right. He didn't receive it on - through the switchboard or through dispatch for Summit County or Kamas

1 City; is that correct?

2 A That's correct.

3 Q And that when he received that phone call, he
4 didn't know who it was from initially, true?

5 A Correct.

6 Q But he responded to that phone call and found out
7 it was Darcy, correct?

8 A Yes.

9 Q Who he knew by voice?

10 A Yes.

11 Q And that he felt that the reason she was calling
12 him was because earlier that day or at some point, his
13 brother had brought him some photograph - or some picture
14 drawings that were done by Darcy's son; is that correct?

15 A That's what he told me.

16 Q And that that had concerned his brother, for
17 whatever reason that is irrelevant here, and that that's what
18 he thought Darcy may be calling him about, correct?

19 A That's what he told me, yes.

20 Q And that had nothing to do with domestic violence,
21 true?

22 A That particular statement has nothing to do with
23 domestic violence.

24 Q Okay. And so - and he told you - in fact, here are
25 his words. "So I says, Well, you know, those drawings he

1 gave me, all those drawings, and so my first impression was,
2 she was talking about something about that. So she's like,
3 come over here." Correct?

4 A She said - I'd have to look at that, Mr. Yengich,
5 to make sure that's exactly how it - in context, but I
6 believe that that's what he told me, yes.

7 Q Okay. I'm reading from the -

8 A Is it from the transcript?

9 Q - transcript that has been provided to me by
10 counsel through you.

11 A I've got the same one I had, sir. Then that's good.

12 Q She doesn't say in that initial conversation, me
13 and Travis are in a fight and I want you to come over here
14 and break it up, does she?

15 A Not that she told me or Chief Jones told me.

16 Q All right. In fact, neither one of them told you
17 that that initial call involved domestic violence at all, did
18 it?

19 A No.

20 Q All right. And he said, anytime somebody's - his
21 brother's in a problem with somebody, they call me. Again,
22 words to that effect.

23 A He has said that.

24 Q And I tell them, don't call me, call the sheriff's
25 office. Right?

1 A He's given them that advice.

2 Q Well, okay, counsel asked you as an experienced
3 officer. I'll ask you a question about, as an officer, if
4 you have a problem that involves a family member or a friend
5 and you get a call, do you see a problem there? Just
6 initially? If you're called as a police officer involving
7 someone that you know, or maybe love, or are related to?

8 A I don't think I really - is that the end of the
9 question, then?

10 Q Yeah, it is.

11 A Okay, good.

12 Q Do you see the - let me put it this way. Do you
13 see the potential for a problem?

14 A No.

15 Q You don't?

16 A No.

17 Q So you don't feel as though you should refer that
18 to somebody else if you receive a call about somebody that
19 you know or are related to or love?

20 A No.

21 Q Okay.

22 A Not initially, no, sir.

23 Q All right. And that's because you don't know
24 exactly what the problem is.

25 A True.

1 Q Okay. But, do you see at least there to be a
2 potential for a conflict of interest?

3 A There's always a potential for a conflict of
4 interest when it involves a family member. That's a fairly
5 general statement.

6 Q Okay, and as an officer, you sometimes have to use
7 your discretion, based upon your judgment and training, as to
8 how you'll respond to it, correct?

9 A Yes, sir.

10 Q Officers use their discretion every day in their
11 line of work, don't they?

12 A Yes, sir.

13 Q Okay. But he says, I tell them to call somebody
14 else because I can't deal with it. Then he said, so I went
15 over and knocked on the door, correct?

16 A Yes.

17 Q Now, he told you at that time, you testified
18 generally about his statements. Do - he told - when he
19 walked in the door, he wasn't going there for a domestic
20 violence response, correct?

21 A That's correct.

22 Q And in fact, when you interviewed Darcy, she said
23 she wasn't calling him over there as a domestic violence
24 victim, correct?

25 A She didn't - she stated that she wasn't calling him

1 over there as a police officer. She was calling him over as
2 his brother.

3 Q Thank you very much. And that's - those are her
4 exact words almost, aren't they?

5 A They're - without reading them verbatim, that's
6 pretty close, sir.

7 Q Okay. And that's - and again, Adam told you the
8 same thing. "When I got there, I saw my brother," and what
9 did he tell you that he did with his brother before he ever
10 dealt with Darcy? Do you recall?

11 A I don't recall specifically.

12 Q All right, he said -

13 A I'd have to look that up, but -

14 Q Let me - I'll read this -

15 A I'll let you read it and refresh my memory, thank
16 you.

17 Q - I'll read it very carefully. Oh, I'm sorry.
18 Six. Adam Jones. You asked him, did he look - when he was
19 drunk, again levels of intoxication, how drunk would you say
20 he was? And his answer, "Typical normal drunk ass self. He
21 is an idiot when he is drunk. I can see it, and that is - I
22 figure that is what he was at." That's what he said to you.

23 A Okay.

24 Q Okay? But then you asked him, "Did he look kind of
25 mad, or was he - was he pretty calm with you?" And his

1 answer, "No, he was calm with me at that time."

2 A That's correct.

3 Q Okay. You go on - or he goes on as you interview
4 him, and as you're talking to him, Brother says, Darcy's in
5 the garage, and go talk to her. Or again, words to that
6 effect.

7 A Very - yes.

8 Q So when he gets there, they're not even in the same
9 room, correct?

10 A That's correct.

11 Q Okay, and there's no yelling back and forth between
12 them, correct?

13 A That's correct.

14 Q And although he - his brother says he's got
15 scratches on him, he doesn't tell Adam when he got them or
16 the location of where he got them, within the house or
17 outside the house, correct?

18 A I don't recall him telling any - giving any of
19 those specifics.

20 Q Okay. All right. So he goes into the garage, and
21 at that time he meets up with Darcy, and once again Darcy
22 tells him that they had been drinking, and that they got into
23 an argument, or words to that effect. But he says that when
24 she's drinking, she's a complete idiot too.

25 A Based on his statement, that's what...

1 Q All right. And he says - or - and she says to him,
2 again, this is what Adam tells you, "She is like, no. I just
3 want you - want him to calm down, I just want him to go to
4 bed, and he needs to know he can't do this to me." And he
5 looked at her - he told you at least he looked at her shin
6 and could see no visible injuries, correct?

7 A That's correct.

8 Q Okay. "I am like, that is fine. I says" - this is
9 what Adam tells you - "Do you want me to call the sheriff?"
10 He asks her that, correct?

11 A That's - by his statement, yes.

12 Q Well, Darcy also told you, you said, do you want me
13 to do anything, you want me to call the cops?

14 A Right. By her statement also.

15 Q And she says no.

16 A Correct.

17 Q All right. And he says - "I says, do you want me
18 to call the sheriff's office, because if you want to file a
19 report, they need to come here." That's what he tells her.

20 A Correct.

21 Q Darcy also iterates that when you talk to her.

22 A According to their statements.

23 Q And she said no. Right?

24 A Yes.

25 Q All right. Both Adam says she says no, and she

1 says she says no, correct?

2 A Correct.

3 Q Later on, before he leaves, he says, "Do you want
4 me to take him," meaning Travis, "with me?" Correct?

5 A I don't recall that, Mr. Yengich.

6 Q You don't? Okay.

7 A No, sir. I'll let you -

8 Q Did he - then let me ask it this way. Did he offer
9 to separate the two of them?

10 A As I recall, he told them that they should
11 separate.

12 Q Okay.

13 A Both of them, that they should not be together.

14 Q But -

15 A I know that part.

16 Q But they both said, no, we're okay, we're going to
17 stay here.

18 A Correct.

19 Q All right.

20 A Neither wanted to leave.

21 Q Neither one wanted to leave, and in fact, Darcy
22 just basically said, you're his brother, put him to bed.

23 A I don't recall that specifically, but that was what
24 Chief Jones did, and I - if you found that in there, I'd be
25 happy to (inaudible).

1 Q I just said it a minute ago.

2 A Okay.

3 Q She said, I just want you to calm him down, I just
4 want him to go to bed.

5 A According to Chief Jones's statement.

6 Q Okay. And - well - so did you suggest that one of
7 them leave the house? You asked that question?

8 A Uh-huh (affirmative).

9 Q And he nods in the affirmative, at least consistent
10 with the -

11 A Yes.

12 Q All right. And - "Okay, did you suggest it to your
13 brother, or just her?"

14 "I told him he needs to leave too when I first got
15 there. I'm like, you just need to get away, you guys have
16 been drinking. You need to get away from one another."
17 That's what he -

18 A Yes.

19 Q - he says he told them.

20 A That's what he said.

21 Q All right. You ask him, "Did you offer to
22 facilitate that in any way, give your brother a ride?"

23 And he says, and I'll read the whole thing in
24 fairness, page 9. "Every time my brother gets into this
25 state, if I try and do anything, he has a tendency to want to

1 get violent - to get not violent with me, but kind of want to
2 push me, and he always wants to fight when he gets drunk, and
3 I just didn't want to deal with it because I have dealt with
4 it a hundred times before. He has come pounding on my door
5 before in the middle of the night. I've tried to take him in,
6 and then it turns out - into a complete ass. And so I am
7 like done. I'm not dealing with you any more when you've
8 been drinking. And he knows that, because now he know - he
9 doesn't call me, he doesn't come over when he gets like that.
10 He will talk to me afterwards."

11 He told you that.

12 A Yes.

13 Q In regards to treatment, you ask him, and I want to
14 get the specific statement in here, you, Agent Gibson.

15 "Okay, as far as the injuries" - yeah, 9 again. Thank you.
16 I'm sorry. That's not fair of me, and I apologize. "Okay,
17 as far as injuries, I don't know how superficial the
18 scratches were, if you saw her injuries. Did you offer to
19 facilitate any kind of medical treatment calls?"

20 His answer, "There was just a superficial scratch
21 on his chest." That was his answer?

22 A Yes.

23 Q Did you - "What about Darcy's leg?"

24 His answer, "I did not see anything."

25 Your statement/question, "Okay."

1 And he says, "And she was walking around. She
2 walked up the stairs in the garage, and she seemed normal."

3 Ask him if you gave him a - he gave them a
4 pamphlet, and he says no. You ask him, "Did you give them
5 any verbal notice?"

6 And he says, "I told Darcy she could call the
7 victim advocate if she needs to file a restraining order,
8 because we have dealt with this a hundred thousand times. I
9 told her, I'm like, you guys are not good for each other, you
10 guys cannot be together, if you are not - if you're together
11 you can absolutely not drink."

12 That's what he said to you, right?

13 A Correct.

14 Q Now, at that time, at any time in your interview
15 with Adam, did you ask him, did you judge either one of these
16 people to be victims under the domestic violent act?

17 A Specifically, no.

18 Q Okay. And did Adam offer to you, I believe one or
19 the other of them was a victim.

20 A No.

21 Q Did he offer that?

22 A Not that I recall.

23 Q Okay. When he's ready to leave again, when he's
24 ready to leave, he once again tells Darcy, if you have a
25 problem, call Summit County. Right?

1 A He told her that a number of times.

2 Q A number of times. And Summit County Sheriff; is
3 that right?

4 A That's correct.

5 Q Okay. Did he ever admit or say to you, I told her
6 not to call them because it was my brother, I didn't want him
7 to get into trouble or anything like that?

8 A That statement was never made.

9 Q All right. Was there any statement that was close
10 to that made?

11 A No.

12 Q And Darcy never said he said anything like that
13 either, did she?

14 A No, she did not.

15 MR. YENGICH: That's all the questions I have of
16 this gentleman, Your Honor.

17 THE COURT: Do you have any other questions, Mr.
18 Bates?

19 MR. BATES: Yes, if I could just have 30 seconds,
20 Your Honor.

21 THE COURT: Please.

22 REDIRECT EXAMINATION

23 BY MR. BATES:

24 Q Agent Gibson, did you ask Mr. Jones - Mr. Adam
25 Jones why he did not take his brother out of the house or

1 give him a ride somewhere or take him to jail?

2 A I didn't ask him specifically why he didn't give
3 him a ride or specifically why he didn't take him to jail, I
4 did not ask that specific question.

5 Q Okay.

6 A But I did -

7 Q Do you know -

8 A - ask him why he didn't facilitate or - if he
9 facilitated a ride - and I'd have to probably go back and
10 look at the statement, if you have a specific page I can
11 probably -

12 Q Okay.

13 A - look at that.

14 Q Would you refer to page 9 of your -

15 A Sure.

16 Q - of this transcript? And I'd like you to just
17 look at the - I'm going to start at the first full paragraph
18 on that page that starts with your name, and just read that.
19 Read the rest of the page there to yourself.

20 MR. YENGICH: Where are you at, you're on page 9,
21 top of the page?

22 MR. BATES: Page 9.

23 THE WITNESS: Do you want me to go just from my
24 name?

25 Q (BY MR. BATES) Just read it to yourself.

1 A Okay. This is the - basically the paragraph that
2 Mr. Yengich read -

3 Q Yes.

4 A - regarding - I asked him specifically, "Did he
5 offer to facilitate Travis leaving the house."

6 Q Okay.

7 A Give his brother a ride, and that's when he -

8 Q What did he tell you, why he didn't facilitate
9 Travis leaving the house?

10 A He said that - this is the one again that goes back
11 to Mr. Yengich - that Mr. Yengich just read regarding the
12 fact that when his brother gets into that state, he has a
13 tendency to get not violent with him, but want to push him
14 around, and then - I'm paraphrasing a little bit, since you
15 just read it, Mr. Yengich. He's been pounding on his door
16 and essentially -

17 THE COURT: Wait a minute. What - he's asking you a
18 question. You can answer the question. You don't have to
19 tell me what this says. I can read this. Is there something
20 else that I don't know?

21 MR. BATES: No, Your Honor. I think what's in there
22 speaks for itself. I didn't realize that the Court still had
23 that copy of the transcript that I provided the Court a
24 couple of months ago.

25 Q (BY MR. BATES) Officer, I'm sorry, Agent Gibson,

1 did you talk to Adam about whether he was aware of anything
2 that happened at the Jones - Darcy Martinez and Travis
3 Jones's house later on that night?

4 A I talked to him if he knew there'd been a followup
5 call, and I asked him about that.

6 Q Okay, what did he tell you?

7 A He said he got a text from Ms. Martinez later in
8 the night. He said he also - as he was getting ready for bed
9 that evening, he missed a phone call from her, and he noticed
10 that on his phone later. He also - I believe he was turning
11 off his computer, or turned on his computer and noticed that
12 there had been a returned call back to the residence later.

13 Q Okay, did he - is there anything else he told you
14 that he did to try to discover what had happened with this
15 subsequent dispatch to the house?

16 A I could flip back through my notes here, but -

17 Q If you would. Would you just turn to page 14?

18 MR. YENGICH: Your Honor, may I ask a question of
19 the Court?

20 THE COURT: Uh-huh (affirmative). Yes?

21 MR. YENGICH: Are we going to mark the transcript?

22 THE COURT: Okay, probably appropriate.

23 MR. YENGICH: In any event?

24 MR. BATES: Sure. We can. Yeah, if you want to
25 mark it.

1 MR. YENGICH: We marked that as Exhibit 1, because I
2 think it should be offered for the purpose of the preliminary
3 hearing.

4 THE COURT: Why don't we use my copy as Exhibit 1?

5 Q (BY MR. BATES) I'm sorry, Agent, did you get a
6 chance to read page 14?

7 A I did. I looked at the section I think your
8 question is regarding. He said his computer was still on
9 when he was getting ready for bed, and he saw that there was
10 a call that had popped up, and he said it was about quarter
11 to 11. He said he did turn on his radio and listened to the
12 response.

13 Q Okay. Now, in your opinion, as an officer with 30
14 years' experience, in your opinion, after having interviewed
15 Mr. Jones and hearing what he had to tell you about this
16 case, in your opinion was either Travis Jones or Darcy
17 Martinez a victim of domestic violence -

18 MR. YENGICH: Objection, Your Honor.

19 Q (BY MR. BATES) - under the Cohabitant Abuse Act?

20 MR. YENGICH: Objection. His opinion is irrelevant.

21 THE COURT: It is.

22 MR. BATES: Your Honor, I don't believe it's
23 irrelevant. Mr. Jones's state of mind is relevant here, and
24 counsel has elicited from this witness that Mr. Jones has
25 never made any direct statements to anybody about whether he

1 believed anybody was a victim of domestic violence. But I
2 think it's entirely relevant to have another officer with a
3 substantial amount of experience, both in police work and
4 domestic violence at West Valley City to render an opinion
5 about whether one of these was a victim of domestic violence,
6 because that tends to establish whether Mr. Jones - although
7 we don't have his testimony on the subject - whether Mr.
8 Jones believed that one of these people was a victim of
9 domestic violence.

10 THE COURT: No, I think what you need to have is you
11 need to have one of these parties come in here and testify.
12 And after they testify, you can ask these kind of questions.
13 But to have him testify as to, someone said to me that
14 someone said to him that someone else said they were a
15 victim, is a little bit farfetched.

16 MR. BATES: Well, I'm not asking whether someone
17 else said to him, I'm - what I'd like to know from him is
18 whether in his opinion as an experienced police officer - and
19 keep in mind, Your Honor, we're not here to determine whether
20 or not one of these people was, in fact, a victim of domestic
21 violence. The question is, a police officer - this is an
22 official misconduct case. Should a police officer in Mr.
23 Jones's position have come to the conclusion that one of
24 these people was a victim of domestic violence, and if so,
25 does that trigger the Co-habitant Abuse Act procedures?

1 MR. YENGICH: May I?

2 THE COURT: Yes.

3 MR. YENGICH: I disagree that that is the standard
4 that we have to apply here. I asked him the question not
5 what his opinion was, or not what my client's opinion was, I
6 asked him, did you ask him did he think either one of them
7 was? And the answer was no, I didn't ask that question.
8 Indeed, the evidence is what my client told him he observed
9 when he got there. That's where the Court makes the
10 determination. Otherwise, we can put on 15 different
11 officers to have 15 different opinions. And that - and 403
12 prohibits that, but 701, 702, and that sequence of Rules of
13 Evidence - and I know the Rules of Evidence don't always
14 apply at preliminary hearings, but the theory at least behind
15 them does, and in this instance, with due respect to the
16 gentleman, who seems like one and apparently is an
17 experienced officer, he is not experienced to testify to
18 that.

19 THE COURT: I think he's right, Mr. Bates.

20 MR. BATES: No further questions, Your Honor.

21 THE COURT: Okay. You may step down, sir.

22 MR. YENGICH: These - just to follow up on a
23 specific question -

24 THE COURT: Oh, are you going to ask him another
25 question?

1 MR. YENGICH: Yes. I -

2 MR. GIBSON: Oh. I thought you said I was
3 dismissed, I'm sorry.

4 MR. YENGICH: He probably did.

5 THE COURT: I did. I didn't know he was going to
6 ask a question.

7 MR. YENGICH: Well, I - and it's just a couple very
8 quick questions.

9 RE-CROSS EXAMINATION

10 BY MR. YENGICH:

11 Q The computer that he observed, and the texts that
12 he received, were both after he was off duty, correct?

13 A I believe that is correct.

14 MR. YENGICH: Thank you. That's all I have.

15 THE COURT: Thank you.

16 MR. BATES: Your Honor, the State will call Officer
17 Ken Jones - Deputy Ken Jones.

18 RICHARD JONES

19 Having first been duly sworn, testified
20 upon his oath as follows:

21 THE COURT: Please state your name and spell your
22 name for the court clerk.

23 MR. JONES: Richard Jones, J-O-N-E-S.

24 THE COURT: You may proceed.

25 ///

DIRECT EXAMINATION

BY MR. BATES:

Q Deputy Jones, what agency are you employed with?

A Summit County Sheriff's Office.

Q How long you been doing that?

A About 10 years.

Q Okay. Were you on duty on February 15th of this year?

A Yes, sir.

Q And were you dispatched to the home of Darcy Martinez on that night?

A Yes.

Q Okay, about what time were you dispatched out there?

A It was about a quarter to 11.

Q Okay. What was the nature of the dispatch?

A Dispatch - it was an open 9-1-1 call, they heard arguing in the background, the specific nature wasn't given. They heard the name Travis, and they gave a partial address.

Q Okay. Now, when you arrived at that address, what did you find?

A I knocked on the door and initially I didn't have a response. I knocked again when I heard raised voices and announced myself as an officer with the sheriff's office, and then I heard them answer, and Darcy came and answered the

1 door.

2 Q Okay. Will you describe Darcy's appearance when
3 she came to the door?

4 A She was crying. She kind of covered her mouth and
5 she pointed inside. She was obviously distraught.

6 Q Okay. What did you do next?

7 A I asked her if she was the one who called 9-1-1,
8 she said that she was. When she said that, I heard Travis - I
9 still hadn't seen him at this point - yell in a very angry
10 tone, "you called the sheriff's," with an explicative. I
11 stepped in at that time, got in between her and Travis.

12 Q Okay. Will you please tell the Court what Travis
13 looked like that night?

14 A He was just wearing drawers, nothing else. He had a
15 large scratch on his chest, kind of an up and down zig-zag,
16 superficial scratch on his chest. He was - he had emotional
17 - he was loud, red, puffed up face, clenched fists -

18 Q Okay.

19 A Very aggressive, bearing.

20 Q Okay. Did he appear - did he appear intoxicated to
21 you?

22 A Yes. He was - showed several symptoms of alcohol
23 intoxication.

24 Q Okay. While you were investigating this incident,
25 how did Travis behave?

1 MR. YENGICH: Objection, it's irrelevant.

2 THE COURT: Why isn't it relevant?

3 MR. YENGICH: It's irrelevant because, unless they
4 can establish that the defendant was there at the time - he -
5 this is after the defendant has left.

6 MR. BATES: It's after the defendant left, Your
7 Honor, but it's relevant to establish the level of
8 intoxication and aggression that Mr. Travis Jones was
9 exhibiting that night, and it corroborates the defendant's
10 own testimony that his brother is extremely violent when he
11 gets drunk.

12 THE COURT: So? Doesn't mean he was drunk when the
13 defendant was there.

14 MR. BATES: Well, the defendant - Your Honor - I'm
15 sorry.

16 THE COURT: In fact, he says when he is very drunk
17 he acts this way. He didn't act that way according to
18 testimony we've had from the transcript, so -

19 MR. BATES: Correct, Your Honor. But the defendant
20 did tell Agent Gibson that when he arrived, his brother was
21 drunk. Your Honor, the defendant knew when he showed up that
22 his brother was drunk. The defendant knew that his brother,
23 when he is drunk, can be very violent and very angry. The
24 fact of the matter is he's not that way with his brother, his
25 brother has some kind of calming effect on him. Agent - or

1 Deputy Jones is here to testify that when his brother's not
2 there, he is, in fact, a very angry, violent drunk. And
3 that's part of the crux of this case, is that Mr. Jones left
4 somebody that he knows is a very angry, violent drunk, who
5 has a history of abusing his wife, in the home that night,
6 instead of following the procedures under the Co-habitant
7 Abuse Act, and removing his brother from the home.

8 MR. YENGICH: That requires - I don't know that the
9 State of Utah, with due respect to my brother at the bar,
10 understands what their theory means. That means every
11 officer, that officers that are in uniform, even an old
12 officer like Sergeant Car, Sergeant to me, have to - they
13 have to make a judgment. And they have to predict the future
14 under their theory.

15 At the time under the evidence the Court has here
16 today, he left, he was calm, and he went to bed, as was the
17 other lady, and he told them, I'm not an - he wasn't even
18 called as an officer. He wasn't - that's the evidence before
19 you, Your Honor. He wasn't called as an officer. That is
20 explicit in the testimony. He's got to make a judgment that
21 sometime in the future something bad may happen under their
22 theory. That's not what the statute says. It is not what
23 the statute says.

24 THE COURT: Mr. Bates?

25 MR. BATES: Your Honor -

1 MR. YENGICH: And what he observed later on is
2 irrelevant.

3 MR. BATES: Your Honor -

4 THE COURT: What he observed later on is irrelevant,
5 because we don't know that's how it was when this officer was
6 here, the defendant was there.

7 MR. BATES: Under the Co-habitant Abuse Act, 7736-
8 2.2, sub 2, sub B, sub little I, if a peace officer has
9 probable cause to believe that there will be continued
10 violence against the alleged victim, or if there is evidence
11 that the perpetrator - well, if you have probable cause to
12 believe there will be continued violence, he must arrest the
13 perpetrator.

14 Now, Your Honor, out of the defendant's own mouth
15 to Agent Gibson, he told Agent Gibson, my brother is an
16 angry, violent drunk. When I try to arrest him, he turns
17 into - forgive me language, he turns into an asshole. And
18 he's been violent and abusive with Darcy Martinez in the
19 past. When I'm there, he's calm. But Mr. Jones knows that
20 when he leaves, there is potential demonstrated, based on his
21 experience and his history with his brother, that there will
22 be violence.

23 Deputy Jones is here to testify that, in fact,
24 there was violence. Just as Mr. Jones had to suspect that
25 there would be based on his history with his brother. He

1 told Agent Gibson, I don't even want to deal with the guy,
2 because when I try to arrest him he's such a jerk and becomes
3 so violent and angry.

4 MR. YENGICH: Well, he has to have probable cause.
5 Probable cause is not the determination of what might or what
6 one suspects will happen. It's based upon the evidence
7 before the individual at the time. It cannot be in futuro.
8 The number of cases on that are - they are legion. That an
9 officer makes the determination of probable cause on the
10 basis of what he observes at the time, in the place, under
11 the circumstances.

12 The only evidence you have is that he went to bed,
13 he put him to bed, she said fine, she said I don't want you
14 to call anybody. He said, if something happens, call Summit
15 County, and they got that much in, that's apparently what she
16 did.

17 He can't be - we can't expect him to make a
18 probable cause determination about what is in the future. He
19 can't. It's like - it is akin to the old cases that deal
20 with - and I'm going to mispronounce this word, expectatory
21 warrants. And that is, you go to a judge and say, we believe
22 in the future such and such is going to do this, because we
23 believe it based upon their reputation, you're not going to
24 sign that kind of warrant because there's not probable cause.

25 THE COURT: I think he's right, Mr. Bates.

1 MR. BATES: Your Honor, that's exactly what the Co-
2 habitant Abuse Act requires. Is for officers to make a
3 probable cause determination about whether -

4 THE COURT: Not what's going to happen in the
5 future.

6 MR. BATES: Well, it says, if the peace officer has
7 probable cause to believe that there will be continued
8 violence against the alleged victim. Now, Officer Jones had
9 a report that the victim had already been assaulted by Travis
10 Jones - he kicked her. He has evidence - he knows that his
11 brother's a violent drunk. He knows that he's drunk right
12 now, he has to have probable cause to think that if he leaves
13 that house, there's going to be continued violence.

14 THE COURT: I don't think so, because he said he's
15 already in bed when he leaves.

16 MR. BATES: Sure, he's in bed because when he's
17 dealing with his brother he's calm. His brother knows how to
18 handle him.

19 THE COURT: That's not what he said. That's not
20 what this transcript says.

21 MR. YENGICH: Right. In fact, he said, he told the
22 gentleman, Officer Gibson, he and I can - we get into
23 arguments. That's why I don't want to deal with him. But he
24 was calm that night and I put him to bed. And she was
25 satisfied with it at the time.

1 MR. BATES: And Your Honor, can I just point out,
2 Ms. Martinez's belief, her thoughts, what she thinks is going
3 on, is entirely irrelevant to this. The whole point of the
4 Co-habitant Abuse Act is to put the authority and the
5 discretion of when somebody's a victim, and what to do with
6 that scenario, in the hands of the police, and to require
7 them to act in certain ways, even when the victim doesn't
8 want it because victims so often, as Ms. Martinez did here,
9 are unwilling to take action against their perpetrators.
10 That's the point of the Co-habitant Abuse Act.

11 MR. YENGICH: Well, but he's making that same
12 judgment. As she determined to do here. We don't know what
13 she determined because they haven't called her. The only
14 information, and I let it in because I didn't object to it,
15 but it's before the Court, is their only information is that
16 she and the Defendant Jones in this case said, there wasn't a
17 victim here. He's got to have probable cause that that's the
18 case.

19 A law enforcement officer - when we start out here,
20 he's not responding as a law enforcement officer - and I
21 don't want to get ahead of myself - who responds to an
22 allegation of domestic violence, he's not responding to an
23 allegation of domestic violence, he shall use all reasonable
24 means to protect the victim. He - there's no evidence that
25 he did not do that, in fact, they went to their respective

1 quarters, and then it gives him discretion. It does. That's
2 exactly the point. He has the discretion, including those
3 things that are listed.

4 Those aren't the only things he can do. He can
5 determine if he believes it's correct that there are no
6 victims, and that nobody's going to be harmed. And he did
7 that in this case. That's the only evidence you have.
8 Monday morning quarterbacking by this gentleman with the
9 Chevron on his arms, who I'm sure is a good officer, doesn't
10 cut it. And what he has to say about what he would've done,
11 or what should've been done, is irrelevant to this case, Your
12 Honor.

13 MR. BATES: Your Honor, I don't believe there was
14 any evidence as to whether Mr. Jones thought there was or
15 wasn't a victim. I believe that the State - that the
16 question that Mr. Gibson answers was, he didn't ask that, and
17 Mr. Jones didn't answer it. We don't have any evidence
18 before the Court about whether Mr. Jones thought there was or
19 wasn't a victim.

20 MR. YENGICH: There was no objection to my question
21 about the interview with Darcy, where she - I asked him, did
22 she claim to be a victim, and he said no.

23 MR. BATES: And I said that's irrelevant, Your
24 Honor. Co-habitant Abuse Act makes it irrelevant. Whether
25 Darcy thinks she's a victim is pointless here.

1 THE COURT: Well, what do you think you're going to
2 get out of this officer, is what I want to know?

3 MR. BATES: Your Honor, I believe it's important -

4 THE COURT: We've now argued all kinds of concepts
5 here.

6 MR. BATES: Sure. I -

7 THE COURT: But the issue is, what is this officer
8 going to supposedly tell me?

9 MR. BATES: Your Honor, what this officer is going
10 to do is corroborate Mr. Jones - Mr. Adam Jones's statement
11 that, when my brother is a drunk, he becomes very violent and
12 very angry. And what this officer will say is that when he
13 showed up that night after Mr. Jones had left, that was, in
14 fact, the case. He's establishing - he's corroborating Mr.
15 Jones's state of mind when he was there -

16 THE COURT: Well, first of all, that's not what Adam
17 Jones said. You can have this officer testify that what he
18 observed when he got there. That's certainly within the
19 realm of his ability to testify.

20 MR. BATES: Sure.

21 THE COURT: But his interpretation of what Mr. Jones
22 said to the investigator, whether or not that meets it, is
23 not for him to decide.

24 MR. BATES: No. No. He has not interviewed Mr.
25 Jones. He has not read the transcript of this investigator's

1 interview with him.

2 THE COURT: Okay.

3 Q (BY MR. BATES) Deputy Jones, will you please
4 describe for the Court Travis Jones's behavior and conduct
5 while you were conducting this investigation?

6 A Very early in the investigation, he was - made
7 aggressive moves toward me, he'd almost mock charge me. Any
8 time I'd ask Darcy a question, he would turn his aggression
9 towards her. He would curse at her and call her a liar. At
10 this time, I placed him in handcuffs because I didn't feel
11 safe to be there alone. After I got him in handcuffs, I sat
12 him down at a kitchen chair, and just very briefly continued
13 to try to investigate, but it would elicit such a response
14 from him that my investigation was hampered. I couldn't do
15 it. So I just told them both to - they kind of got into a
16 shouting match, to just calm down until another officer
17 arrived. Once that other officer arrived I continued my
18 investigation.

19 Q Okay, now at some point that night did you arrest
20 Travis Jones?

21 A I did.

22 Q And how did he behave when you were arresting him?

23 A Same way. At one point he actually ducked under my
24 arm and ran for a little bit. Didn't - he made these mock
25 charges towards me and towards Darcy all night. This time

1 when I interposed myself in between him and Darcy, he ducked
2 around a table and turned on a light with his hands still
3 cuffed behind his back, I can't even guess why, but we got a
4 hold of him. We took him out to my car. On the way there he
5 screamed and yelled, and he said he was going to bite my
6 face, bite my nose and my ears if he got a chance. He lashed
7 out and kicked a traffic cone, and just kept up with a
8 violent, vulgar tirade the whole way to the jail.

9 Q Okay. Now was there anyone else at the house
10 besides Darcy?

11 A Yes.

12 Q Who else was there?

13 A There was two children there, a 10-year-old who
14 identified himself as Ryan Degrazio and Ryan Martinez, I'm
15 not sure which is the proper one, and then a 2-year-old named
16 Jackson who Ryan appeared to be watching.

17 Q And did you observe any injuries on anyone at the
18 house besides Travis Jones?

19 A Yes, I observed injuries on both Darcy and Ryan.

20 MR. BATES: I think that's all I have of this
21 officer, Your Honor.

22 THE COURT: Questions of this officer, Mr. Yengich?

23 MR. YENGICH: Just a couple. Thank you, Your Honor.

24 ///

25 ///

CROSS EXAMINATION

BY MR. YENGICH:

Q Did you ever call Adam Jones that night?

A No.

Q Did either - and I don't want to hear what they said, but did either Darcy or Travis tell you that Adam had been there earlier?

A Not to me.

Q Not to you.

A There was another officer at the scene there.

Q And who was that? That was Officer?

A Deputy Nakiishi.

Q Nakiishi. Okay.

A Yes, sir.

Q That's the correct way to pronounce it. I have his report.

A Yeah.

Q Who told him in your presence that Adam had been there earlier?

A It wasn't in my presence.

Q It was not in your presence.

A No.

Q Okay. And before you cleared the scene, were you aware that Adam Jones had been to that house earlier that night?

1 A I wasn't.

2 THE COURT: You were, or not?

3 THE WITNESS: I wasn't.

4 Q (BY MR. YENGICH) When did you find out
5 chronologically that Adam had been there earlier?

6 A I left Deputy Nakiishi with several tasks that I
7 was unable to perform while I was there, collecting the
8 statistics of the little kids, taking pictures of the
9 injuries, and doing some followup interviews. I just wasn't
10 able to do it at the scene due to Travis's behavior. After I
11 went en route to the jail with Travis, or at the jail, Deputy
12 Nakiishi called me and briefed me with the things I -

13 Q Information that Adam had been there earlier?

14 A Yes, sir.

15 Q And what time of the day was that? Day or night?

16 A It was around midnight.

17 Q Did you call Adam then?

18 A No.

19 Q Did you ever - did you call him the next day?

20 A I never called Adam.

21 Q Did you direct anybody to call him and take a
22 statement of what he had observed?

23 A I did a command staff notification. One of the
24 criteria we use for a command staff notification is any
25 incident that could adversely effect interagency

1 relationships. So I called my immediate supervisor,
2 Lieutenant Wilkinson, and briefed him about the case.

3 Q Did you tell Lieutenant Wilkinson, Adam Jones, the
4 police chief in Kamas, may have some information about this?

5 A Yes.

6 Q Did you say that we probably should interview him
7 to find out what he had observed?

8 A I left that up to Lieutenant Wilkinson's
9 discretion.

10 Q You were the initial officer on the scene, correct?

11 A Right.

12 Q Were you also the followup officer?

13 A There was a deputy who went the next day to do some
14 photographs.

15 Q Who was that?

16 A Deputy Buhler.

17 Q Okay, so whose case would this be in the -

18 A My case.

19 Q It would be your case in the normal terminology.

20 A Right.

21 Q And so did you make any effort to call Adam and
22 say, Adam, what did you see? What did you hear? What did
23 you observe?

24 A No, I didn't.

25 Q Ever?

1 A Ever.

2 Q When Travis - you first saw Travis, he was coming
3 out of the bedroom?

4 A Coming down the hallway.

5 Q Coming down the hallway.

6 A The bedroom's that way too, so -

7 Q Okay.

8 A - I don't know.

9 Q Coming from the direction of the bedroom.

10 A Coming down the hallway. There's other rooms down
11 this same hallway, so -

12 Q Okay. Is a bedroom down that hallway too?

13 A Yes.

14 MR. YENGICH: That's all I have of the gentleman,
15 Your Honor.

16 THE COURT: I guess we ought to have one point in
17 clarification, Officer Jones, since this seems to be a big
18 family affair. Are you related to any of these people?

19 THE WITNESS: No.

20 THE COURT: Thank you.

21 MR. YENGICH: Well done.

22 THE COURT: You may step down.

23 MR. YENGICH: Can we take a three-minute break?

24 THE COURT: Certainly.

25 (Whereupon a recess was taken)

1 THE COURT: Call your next witness.

2 MR. YENGICH: He has one more question of the last
3 gentleman, Your Honor, as I understand it.

4 THE COURT: Okay.

5 MR. BATES: Your Honor, I didn't get a chance to
6 redirect Deputy Jones.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION

9 BY MR. BATES:

10 Q Deputy, counsel on cross examination asked you
11 whether you had talked - interviewed Adam Jones about this
12 case, or about the - his report that night and you responded
13 that you hadn't. Would you explain to the Court why you
14 didn't?

15 A I didn't think that - from what Nakiishi told me,
16 that Darcy told her that Adam really had a lot to add to my
17 case, which was the Travis Jones case, and I figured that
18 once I let Lieutenant Wilkinson know about his involvement,
19 that the matter was a little above my pay grade.

20 Q And where on Darcy Martinez did you observe
21 injuries?

22 A It was on her shin area.

23 Q What kind of injuries were there?

24 A Bruising, or the starting of bruising.

25 MR. BATES: That's all, Your Honor.

1 RE-CROSS EXAMINATION

2 BY MR. YENGICH:

3 Q So you made the call, you used your discretion as
4 an officer, not to follow through in any regard; is that
5 correct?

6 A To follow through?

7 Q By calling Jones.

8 A I didn't feel I needed to talk to Adam about this
9 case.

10 Q That was your decision.

11 A That was.

12 Q Thank you.

13 A It wasn't a task I was given by anyone to follow up
14 with Adam.

15 Q And you didn't ask, should I or shouldn't I of
16 anybody, or did you?

17 A No.

18 MR. YENGICH: Thank you. No further questions.

19 THE COURT: You may step down.

20 MR. BATES: Your Honor, the State would call Deputy
21 Trace Thomsen. He's out in the hall, I'll grab him.

22 TRACE THOMSEN

23 Having first been duly sworn, testified
24 upon his oath as follows:

25 THE COURT: Please state your name and spell your

1 name for the court clerk.

2 MR. THOMSEN: Spell my name, sir? Corporal Trace
3 Thomsen, T-R-A-C-E T-H-O-M-S-E-N.

4 DIRECT EXAMINATION

5 BY MR. BATES:

6 Q Corporal, what do you do for a living?

7 A I am a corporal corrections officer assigned to the
8 Summit County Sheriff's Office. I work back in their
9 detention facility.

10 Q Okay. And were you on duty on February 16th of
11 this year?

12 A Yes, I was.

13 Q And where were you assigned to work on that date?

14 A I'm actually a rover. I work wherever I'm needed
15 basically. So at the time I was actually - of this
16 occurrence, I was actually up relieving central or having
17 lunch inside of central command.

18 Q Okay, and at that point - let's see, what time did
19 you come on your shift that morning?

20 A 6:00 a.m. we start. It would've been a day shift.

21 Q And at that point was Travis Jones in the detention
22 facility?

23 A Yes, he was.

24 Q And where was he located?

25 A Over in a booking cell, H3.

1 Q Okay. And do you recall that morning Adam Jones,
2 his brother, coming over to the jail?

3 A Correct.

4 Q Did you speak with Adam?

5 A I did, briefly.

6 Q What did Adam tell you as to why he was at the
7 jail?

8 A Check on his brother, make sure he was okay.

9 Q Okay. Did you allow him to check on his brother?

10 A I did.

11 Q And where did this visit happen?

12 A Over in booking where Steven, his brother, was.

13 Q Okay.

14 THE COURT: Steven?

15 MR. BATES: Does he go - it's Travis - Steven
16 Travis?

17 THE WITNESS: I'm sorry, yeah it's Travis - yeah,
18 it's Steven Travis, I'm sorry. I work in back, so his
19 brother Steven Travis Jones.

20 THE COURT: Okay.

21 Q (BY MR. BATES) I believe he goes by Travis.

22 A Yeah.

23 Q Okay. So did you see Adam Jones and Travis Jones
24 speak?

25 A I did.

1 Q Okay, how far away from them were you?

2 A Seven feet maybe, just right at the booking counter
3 of the cells, maybe seven feet or so, not very far at all.

4 Q Okay. Were you able to overhear what they were
5 talking about?

6 A Yes.

7 Q Will you please just describe for the Court the
8 substance of that conversation?

9 A I -

10 MR. YENGICH: Objection as to the substance. Excuse
11 me. If he recalls specific words, I'd ask him to testify
12 exactly what he heard, and then if he can't, that he advise
13 that it's the substance under the rule, Your Honor.

14 THE COURT: Very well. Proceed that way, please.

15 THE WITNESS: He - they were standing over by H3, I
16 was in the middle by the booking counter between the two
17 computers to observe them, and I observed Adam tell Travis
18 that he was at his residence last night, and that he was
19 passed out in bed while he was there. And you know, he told
20 him he was obviously intoxicated. They said something -

21 THE COURT: Who - I thought you just said you heard
22 Adam say this, and now you're saying - who said - Adam's
23 saying this? You're saying Adam is saying this to his
24 brother, Travis? Steven Travis?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 Q (BY MR. BATES) So tell us - Adam told - tell us,
3 what did Adam tell his brother, Travis? If you could just -
4 as best a quote as I can.

5 A I'll refer to my report, or my statement. He said
6 that when he got to his residence he was passed out on his
7 bed. I then heard something regarding a truck, and advice
8 given to Travis, his brother, that he needs to do something
9 about his drinking.

10 Q Okay.

11 A Adam then told his brother goodbye, came up behind
12 the booking counter, and sat by me to speak with me. The
13 conversation was pretty brief.

14 Q Okay. What did Adam tell you when you spoke with
15 him?

16 A Adam sat right next to me and he informed me that
17 him and his wife fight all the time -

18 Q Now, when you say him and his wife, was he specific
19 as to who him is?

20 A Referring to Travis, who was incarcerated for
21 domestic violence.

22 Q Okay.

23 A And he informed me that his sister-in-law called
24 him the night of, or when the incident as occurred, as to why
25 he was in jail, and told Adam that he needed to come over and

1 talk or take care of his brother.

2 Q Okay. Did he say any - did Adam say anything about
3 what he found to you, did he say anything about what he found
4 at the residence or the state that Travis was in when he got
5 to the residence?

6 A Again, he informed me that his brother was passed
7 out, intoxicated in his bed. And then told me that he told
8 his - I guess it would be his sister-in-law, or his brother's
9 girlfriend or wife - I'm not sure if they were married - that
10 he instructed her not to wake him up.

11 Q Okay.

12 A Because he was intoxicated.

13 Q So this statement that when he got there Travis was
14 passed out asleep in bed, is that essentially what you heard
15 him tell Travis?

16 A Yeah.

17 Q In the holding cell?

18 A By the cell, and then he came up and told me, I
19 don't know why, but he did.

20 Q Okay. Now, did he say anything to you about what
21 happened after he visited his brother's residence?

22 A Like after when he was over there when he was
23 passed out in his bed, or?

24 Q No, my question is -

25 A I'm sorry.

1 Q - Adam Jones obviously told you some things that he
2 saw when he was at his brother's residence.

3 A Uh-huh (affirmative).

4 Q When he left that residence.

5 A Uh-huh (affirmative).

6 Q Did he say anything to you about what he saw or
7 heard or do after he had been at his brother's residence?

8 A Yeah, prior to him leaving, he told his - sorry -
9 Travis - that told his wife or girlfriend, whoever she is,
10 that if she wanted to do anything about it, that she needed
11 to contact the sheriff's office about the incident to - I
12 guess why he was there.

13 Q So that's what he told you that he told Darcy
14 before he left her home?

15 A Correct. Or that -

16 Q Okay. Corporal, will you - do you have your
17 statement that you wrote about this incident before you?

18 A I do.

19 Q Will you just look on page 2? The paragraph at the
20 top of that page, and just read that to yourself?

21 A Yes. Chief Jones stated -

22 Q No, I'm sorry. Just read it in your mind.

23 A I'm sorry. Okay.

24 Q Yeah. That's all right.

25 A Okay.

1 Q Okay, does that refresh your recollection about
2 anything that Adam Jones might have told you that happened
3 after he left Darcy Martinez's house?

4 A He stated that Darcy called him on his cell phone.
5 And he specifically stated to me he knew it was Darcy because
6 he looked at the number and saw that it was Darcy calling
7 him. And -

8 Q Did he say whether he answered the phone?

9 A He didn't answer the phone.

10 Q Did he say why he didn't answer the phone?

11 A Well, he didn't answer the phone, he informed me,
12 because he knew what she was calling for.

13 Q Okay.

14 A It was about his brother.

15 Q Okay. And then did he indicate to you whether he
16 learned anything else about what had happened at that night
17 after she called?

18 A He indicated to me that he - after he knew that she
19 called, that he turned on his police radio and heard the
20 dispatch call out for - I don't know what kind of call was
21 called out, but he did hear dispatch place a call out for - I
22 don't know what reason, but he didn't explain that to me.

23 MR. BATES: That's all the questions of this
24 witness, Your Honor.

25 ///

CROSS EXAMINATION

BY MR. YENGICH:

Q When you were in the jail listening to this conversation, were you taking any notes?

A No.

Q Was it tape recorded?

A No.

Q And relative to the distance between you and Adam and his brother, we've been referring to him as Travis, okay?

A Okay.

Q All right, between him and Travis, distance in the courtroom from where you're seated, how far away were you from them?

A From where I'm seated right now?

Q Yes, sir.

A Probably here to Mr. Bates.

Q All right. At counsel table in the courtroom. I don't know.

THE COURT: Would you like to estimate how far that is?

Q (BY MR. YENGICH) Would you like to estimate?

A Eight feet or so? 10 feet? Eight to 10 feet.

Q Okay. I would go - I don't know -

A Maybe more.

Q - it's more than a free throw, so I'd go 12. Maybe

1 a weak measure.

2 THE COURT: I'd say it's closer to 20 feet, isn't
3 it?

4 Q (BY MR. YENGICH) All right. Yeah, it's a way away.
5 Right? And you weren't doing any investigation as you were
6 overhearing them?

7 A No, I was concerned - it was odd that he was in
8 there, but I was - you know, I've never seen his brother or I
9 rarely saw Chief Jones, and so I wasn't doing an
10 investigation-

11 Q Yeah.

12 A - but I was listening to - you know.

13 Q Did they say hello to one another?

14 A They did.

15 Q That's not in your report, is it?

16 A No.

17 Q All right. What did they say? Hi Travis. Hi Adam?
18 Hey bro, how you doin'? You dumb ass, you're in jail? I -
19 you know, 'kick you - beat you up - what did they say? What
20 was their initial statement to one another?

21 A If I can refer to my report -

22 Q You can.

23 A - I can.

24 Q Is it in there?

25 A Steven greeted his brother.

1 Q What did he say?

2 A I say - I reported he greeted his brother. I
3 didn't state what he stated - greeted his brother, that's
4 what I put.

5 Q That's what you put.

6 A Yes.

7 Q Okay. And did his brother greet Steven? Do you
8 know?

9 A Do I know? I would assume that he did.

10 Q All right. I'm not asking you any assumption. Do
11 you recall what he said to him specifically? Did he say hi
12 back? Did he say hello? Again, did he admonish him for
13 being in jail at that initial greeting, or do you know?

14 A Not at the initial greeting.

15 Q Do you know?

16 A He was checking on his brother - No, I don't know
17 if he said hi or hello.

18 Q All right.

19 A I would assume that they - that you would.

20 Q All right. Again, I don't want assumptions. I'm
21 trying to get exactly what was said, not your - necessarily
22 your summary of it. What was the next thing that was said,
23 if they - if he greeted his brother back, what was the very
24 next words that were used?

25 A All I can refer to is what's in my statement.

1 Q Okay, so you don't recall?

2 A No, just what's in my statement I can recall from.

3 Q Do you recall word for word the very next words
4 that were said?

5 A No. Just -

6 Q All right.

7 A - I recall what's in - what I wrote in my
8 statement.

9 Q All right, do you recall what preceded the - what
10 is in your statement where it says, "I did hear Chief Jones
11 state that he did go over to his brother's residence." What
12 did he say immediately before that, if you know?

13 A I don't know.

14 Q After that, you put in your statement, Chief Jones
15 stated to Steven, "When he got to his residence, he was
16 passed out in bed." What was said immediately before that?
17 If you know, by either one of them.

18 A I can only refer to what I put in my statement,
19 sir.

20 Q So the answer is you don't know.

21 A No.

22 Q All right. Did he say to his brother Travis, you
23 were passed out when I left the residence? If you know, at
24 any time?

25 A No, he informed me that he was passed out when he

1 left the residence.

2 Q Okay, he told you that.

3 A Correct.

4 Q Okay. Then you heard something regarding a truck.
5 What was said immediately before that, if you know?

6 A Like I say, I can only refer to what's in my
7 statement.

8 Q And so in reality, the exact words that were
9 employed by either of these two men, you don't know.

10 A Bits and pieces, but no, I don't have exact.

11 Q Thank you. But you do recall him - him meaning
12 Adam, telling you that he had told - well, let me strike
13 that. Did he refer to the woman as his sister-in-law? Or
14 was that your assumption?

15 A Sister-in-law, wife, I'm not sure. That was my
16 assumption, I guess.

17 Q All right.

18 A I don't know if they're married or what, I wasn't
19 going to -

20 Q All right. No one's trying to put you on the spot
21 here. I want to know what words he used. Did he use sister-
22 in-law, girlfriend, wife, do you recall?

23 A I can only recall what he put in my statement.

24 Q Did he use that word? Sister-in-law?

25 A I put spouses. I don't have sister-in-law in

1 there.

2 Q You do too -

3 A Do I?

4 Q - at the bottom of page one.

5 A Okay.

6 Q Adam further stated to me that he told his sister-
7 in-law. Did he -

8 A Well, that's what I'll testify to then. I don't
9 know.

10 Q Did he use that word, or was that an assumption, is
11 my question.

12 A I would assume he used the word.

13 Q You would assume that. You don't - you can't say
14 for one hundred percent sure, can you?

15 A No. I don't know if they're married or not. They
16 probably cohabitated together, so I'm assuming, you know,
17 boyfriend, girlfriend, wife -

18 Q All right.

19 A - husband.

20 Q Some of what you put in here is your assumption on
21 certain things; is that correct?

22 A As far as the sister-in-law -

23 Q As far as other things. Some of what you put in
24 relative to this conversation are your assumptions of certain
25 things, correct?

1 A As if they were married or not married, yes,
2 because I did not know that.

3 Q You've indicated on direct examination that he told
4 you, Adam Jones told you, that he told either - whoever she
5 was, the woman in his brother's life, that if she had a
6 problem to call Summit County.

7 A Correct.

8 Q Is that in your report?

9 A Yes.

10 Q Where?

11 A I put, "Adam further stated to me that he told his
12 sister-in-law that if she wants to do anything about
13 tonight's incident, she needs to call the sheriff's office to
14 report it."

15 Q Okay. Did you ask him any questions about that?

16 A I didn't have anything to do with his
17 investigation. I didn't know why he was there or what was
18 happening with the case. I had no knowledge of the case.

19 Q Your report is an email to Lieutenant Katy Booth;
20 am I correct in that?

21 A Correct.

22 Q Were you asked to prepare that email by anyone?

23 A By my lieutenant, Katy Booth.

24 Q And when - did she indicate to you why she wanted
25 you to prepare a report about Adam talking to his brother?

1 MR. BATES: Objection, Your Honor. Hearsay,
2 relevance.

3 THE COURT: I think it's very relevant. Overruled.

4 Q (BY MR. YENGICH) Did she tell you why?

5 A Yes, she did. She wanted to know why he would - he
6 came back into the jail.

7 Q To see his brother.

8 A Correct. And what our conversation was, or if
9 there was any conversation, that was it. There was no
10 questions asked. She wanted to know why -

11 Q He was there.

12 A Correct.

13 Q Other than this email, were there any other notes
14 or - on scraps of paper, in a book, or anything else,
15 prepared by you?

16 A No. Just the statement that I gave to my
17 lieutenant.

18 MR. YENGICH: That's all the questions I have.

19 THE COURT: When did you prepare this report?

20 THE WITNESS: It would've been the same day. I
21 don't know if the exact time's on here, but it would've been
22 the same day.

23 MR. YENGICH: At 5:25 p.m.

24 THE WITNESS: Yeah. 5:25.

25 THE COURT: Do you work a 12-hour shift?

1 THE WITNESS: I do.

2 THE COURT: Okay. Okay. Anything further?

3 MR. YENGICH: I have nothing further.

4 THE COURT: You may step down.

5 THE WITNESS: Did you have anything?

6 MR. BATES: Just quickly.

7 REDIRECT EXAMINATION

8 BY MR. BATES:

9 Q To the best of your knowledge, is everything you
10 put in that report true and accurate?

11 A Yes.

12 MR. BATES: Your Honor, that's my last witness. I
13 do have one exhibit to offer.

14 THE COURT: Okay, what is it?

15 MR. BATES: Let me provide a copy to Mr. Yengich.
16 I'll mark this as State's Exhibit #2.

17 I'll drop some things on the floor while I'm doing
18 it.

19 Your Honor, State's Exhibit #2 is a copy of
20 ordinance #02-1 from Kamas City, establishing a police
21 department and establishing a chief of police, and I'd offer
22 that in as Exhibit #2.

23 MR. YENGICH: No objection, Your Honor. And I
24 forgot a question of the last witness, I apologize.

25 THE COURT: Is he still here?

1 MR. YENGICH: May I? I can -

2 MR. BATES: If he's still here, I'll grab him.

3 MR. YENGICH: He's here. May I?

4 THE COURT: Yes. Let's let him get back on the
5 witness stand before you do.

6 RE-CROSS EXAMINATION

7 BY MR. YENGICH:

8 Q Other than the email document that we've been
9 talking about.

10 A Uh-huh (affirmative).

11 Q Did you file any other report regarding domestic
12 violence as it related to Travis Jones?

13 A No.

14 MR. YENGICH: Thank you.

15 THE COURT: Did you file anything related to Darcy
16 Martinez?

17 THE WITNESS: I haven't.

18 MR. BATES: Can I just follow that up, Your Honor,
19 real quick?

20 THE COURT: Uh-huh (affirmative).

21 FURTHER REDIRECT EXAMINATION

22 BY MR. BATES:

23 Q Were you - at the time you were speaking to Mr.
24 Jones, were you aware of any domestic violence, personal
25 knowledge, as far as aware of domestic violence between

1 Travis Jones and Darcy Martinez?

2 A Never. I rarely saw Chief Jones, and probably the
3 first time seeing his brother, I wasn't aware of a history or
4 what their family history is. I wasn't aware of anything
5 like that.

6 FURTHER RE-CROSS EXAMINATION

7 BY MR. YENGICH:

8 Q Have you ever filed a report - I mean you know why
9 we're here today, right?

10 A Yeah.

11 Q Have you ever filed a report, you personally, about
12 Travis or Darcy in domestic violence?

13 A No. Never.

14 Q Okay. Travis is in jail now, isn't he?

15 A Correct.

16 Q You work there still, right?

17 A I do, yeah.

18 Q And, in fact, he's in jail for subsequent domestic
19 violence, correct?

20 A I believe so.

21 Q Okay. Between this date, February 17th, and the
22 day he entered in the jail, did you ever file a report of
23 domestic violence?

24 A No.

25 Q Did you follow up and do any investigation?

1 A Nope.

2 Q You did become aware, however, that he had been
3 arrested for domestic violence, correct?

4 A Travis or -

5 Q Yes, sir.

6 A I was aware that day, yes. I don't keep track of
7 everybody that comes in and out my door.

8 Q No, but you were aware of it that day.

9 A Yeah.

10 MR. YENGICH: That's all. No further questions.

11 THE COURT: You may step down. You're free to
12 leave.

13 Anything further?

14 MR. YENGICH: We have (inaudible).

15 THE COURT: Yes.

16 MR. YENGICH: I have one witness -

17 THE COURT: Okay.

18 MR. YENGICH: - to call. And I'm going to recall
19 Agent Gibson to the stand just for about four questions.

20 THE COURT: Okay.

21 CRAIG GIBSON

22 having been first duly sworn, testified
23 upon his oath as follows:

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. YENGICH:

3 Q When did you interview Darcy?

4 A March 3, 2011.

5 Q When did you interview Adam?

6 A March 7, 2011.

7 Q Did you file a domestic violence report in Summit
8 County after interviewing them?

9 A No, sir, I did not.

10 Q Okay. Did you ever interview Travis?

11 A No, sir, I did not.

12 Q Okay. And in fairness to you, why didn't you file
13 the report?

14 A Because Summit County was handling the domestic
15 violence involving Travis and Darcy.

16 Q You are a category one peace officer?

17 A That's correct.

18 MR. YENGICH: No further questions.

19 THE COURT: Thank you. Anything further of this
20 witness?

21 MR. BATES: No, Your Honor.

22 THE COURT: You may step down.

23 Any other witness, Mr. Yengich?

24 MR. YENGICH: I have none, Your Honor.

25 Your Honor, I'd asked previously to brief this

1 matter. I've spoken to counsel for the State. We will - I
2 would like to brief it after we receive a transcript, we've
3 been working on it anyway, but I didn't know how the evidence
4 would come in. And I would like, depending upon when - I
5 will - I'll have my secretary make the request immediately,
6 I'll email her right now, I would like 30 days after we get
7 the transcript to file my brief.

8 THE COURT: Okay. Acceptable?

9 MR. BATES: That's fine, Your Honor.

10 MR. YENGICH: And giving counsel the same amount of
11 time. And then giving me a week after his - instead of five
12 days, a week?

13 The only question I have, Judge, is this. I have a
14 homicide I'm getting ready for and that comes up after the
15 first of the year, and I've also got a federal case that they
16 claim is going to go, though I doubt it. So if they don't
17 get me the transcript until the Christmas holidays, I may
18 need more than that 30 days.

19 THE COURT: All right.

20 MR. YENGICH: And ask the Court to indulge me.

21 THE COURT: Okay. Thank you very much. We'll be in
22 recess waiting for the memos.

23 MR. YENGICH: Thank you, Judge.

24 MR. BATES: Your Honor?

25 THE COURT: Uh-huh (affirmative).

1 MR. BATES: Could the Court return the copy of the
2 amended information that I gave the Court? Did the Court
3 find the copy we filed?

4 THE COURT: Yes. I have the -

5 MR. BATES: Okay. Thank you.

6 THE COURT: - I have the -

7 MR. BATES: Thanks, Your Honor.

8 THE COURT: - original signed by you.

9 MR. YENGICH: May we be excused?

10 THE COURT: Unless you want to file a collective
11 one.

12 MR. BATES: I can do that.

13 THE COURT: Why don't you do that?

14 MR. BATES: I'd be happy to do that.

15 THE COURT: (Inaudible). We'll be in recess.


16 (Whereupon the hearing was concluded)
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18
19
20
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CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned proceeding held by Judge L. A. Dever was transcribed by me from an audio recording and is a full, true and correct transcription of the requested proceedings as set forth in the preceding pages to the best of my ability.

Signed November 30, 2011 in Sandy, Utah.


Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

Addendum D

REC'D JUL 29 2011

Interview of Chief Adam Jones
Interviewed by Special Agent Craig Gibson and Special Agent Ed Spann
March 7th 2011
Case #2011-114
Transcription by Teri Savage

Craig Gibson: The reason I asked you to come in and talk to you is on the 15th you responded to a call from personal assistance from Darcy Martinez.

Adam Jones: Uh-huh (affirmative).

Craig Gibson: I'm not quite sure; I'll just call her Darcy Martinez, because I don't know what the relationship is. I guess technically now she is your sister-in-law?

Adam Jones: I'm not claiming her, so.

Craig Gibson: Ok. So, let me slip the recorder on, we'll record this. We got a, we got a request to look into that because when you responded, obviously as a police officer, you understand that when you respond to calls of domestic violence there are certain obligations that we are required to, to kind of check the boxes on.

Adam Jones: Uh-huh (affirmative).

Craig Gibson: Make sure that we take care of. And so we were asked to look at your response. What you did, what you may have not done and so really we are just wanting to get your side. I've talked to Darcy. I've look at the interview with RB, which is Ryan, right, the ten year old?

Adam Jones: Ok.

Craig Gibson: I've talk to him. I haven't talked to your brother cause obviously he is, he is facing charges of domestic violence so I really can't discuss with him right now without, you know, maybe crossing those boundaries of, of getting into the criminal investigation that is handled by Summit County. So, I haven't talked to him. I may still talk to him. I don't know, it depends on what we talk about today. So, I'm going to talk to you, you are free to go. There is no issue of Miranda.

Adam Jones: Ok.

Craig Gibson: You know where the door is. You might get lost in our building but I promise you can go. We'll help you get out. So there is you are not in custody. This is a criminal investigation. Basically if a police officer does not charge or take care of their duties, uhm, then there is actually a crime involved. It is a Class A Misdemeanor. It is basically neglect of duty, uhm and that is one of the reasons sometimes the AG looks at things like that. We look at cases that are a little bit outside the norm. We also look at cases that might be a conflict of interest, ok? So, we are neutral, we don't really have any political interest in....

Adam Jones: Ok.

Craig Gibson: In anything going on up in your neck of the woods, ok. We will look at the facts of the case. We present the facts of the case to our attorneys here at the AG's Office, they will evaluate it and if there is any merit then we will go from there.

Adam Jones: So is this coming off from the Sheriffs Office, specifically?

Craig Gibson: It came from their investigation, to my boss, which is our chief, our division chief, Chief Wallentine to me.

Adam Jones: Ok.

Craig Gibson: And so, I am charged with just looking at it, just.....

Adam Jones: Ok, I have no problem. I'll tell you everything that happened. You want me to tell you (inaudible).

Craig Gibson: Super. Let, let me go through my questions.

Adam Jones: Ok.

Craig Gibson: Cause I took the time to prepare them. I'd appreciate it if you'd let me at least take the time to do it. So, I've got some questions and what that will do is keep us focused.

Adam Jones: Ok.

Craig Gibson: On the focus of really the case so that the questions that are involved in your response.

Adam Jones: Ok.

Craig Gibson: So once we get those, I will kind of give you time at the end if you want to, you know, you know want to (inaudible).

Ed Spann: If we haven't answered, if we haven't filled in the blanks on things you think we should know, please (inaudible).

Adam Jones: Ok.

Craig Gibson: Let us do it. Again the questions just keep me focused and so that will help a lot. So, it really kind of goes from, from what my perception of what the focus of any problems or any issues that are with this case.

Adam Jones: Ok.

Craig Gibson: How did you recall, how did you receive the call to respond to the incident?

Adam Jones: She called my personal cell phone.

Craig Gibson: Ok and when you use she....

Adam Jones: Darcy. Darcy called my personal cell phone.

Craig Gibson: Darcy. Ok, all right, Darcy called. And from what number did she call?

Adam Jones: I would have to look it up.

Craig Gibson: Ok.

Adam Jones: I don't have her in my phone.

Craig Gibson: Do you recognize, did you recognize the number?

Adam Jones: No.

Craig Gibson: No? Ok, so you just got a number on your personal phone?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Ok. About what time did you, did she call you?

Adam Jones: I would say it was about quarter to ten.

Craig Gibson: Ok.

Adam Jones: Right around there.

Craig Gibson: And where were you at the time?

Adam Jones: I was sitting in the office.

Craig Gibson: At the office?

Adam Jones: Yes.

Craig Gibson: So, did you go directly over to the house or kind of what was your response?

Adam Jones: Well, when she called me she asked me if I would come over and talk to her. And I was trying to ask her about what, because earlier in that day, my brother had brought over a bunch of drawings that Ryan had drew, and then saying that he was trying to kill himself and so he was asking me what he can do because he has been down several avenues and no one seems to be helping him. So, I says well you know, those drawings, he gave me all those drawings and so my first impression was she was talking something about that, so she's like, come over here. Well, I'm like what's going on, because every person my brother has ever been with, they always call me when there is a problem. And I tell them, do not call me. Call the Sheriff's Office. Call somebody else because I can't deal with it. So, I am like, maybe it has to do with that. So I went over there and knocked on the door.

Craig Gibson: Ok, let me back up. One little thing, cause you are starting to free...

Adam Jones: Ok.

Craig Gibson: You are trying to give me the story, which is good. But on this (inaudible) that I will want to interrupt you too often. When you drove over, and this may be a two-part question, were you on duty and did you drive your patrol vehicle?

Adam Jones: Yes.

Craig Gibson: Ok. So both, answers?

Adam Jones: Yes.

Craig Gibson: Ok. About what time did you, do you think you arrived?

Adam Jones: Like a minute after the phone call, maybe.

Craig Gibson: So, from your office to their house, I know Kamas isn't huge, but how far would you say?

Adam Jones: Four blocks, maybe if that.

Craig Gibson: Four blocks?

Adam Jones: Might be a little longer, I mean I could count them.

Craig Gibson: No, it is good. You know, we aren't going to...just approximations.

Adam Jones: Right there.

Craig Gibson: Ok, all right. So, just maybe a minute after?

Adam Jones: I would assume so.

Craig Gibson: Ok, so you knocked on the door?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Ok, who let you in?

Adam Jones: My brother.

Craig Gibson: Ok, so Travis let you in?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Were you in uniform?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Just like (inaudible)?

Adam Jones: Uh huh (Affirmative).

Craig Gibson: And so you talked to Travis first, right?

Adam Jones: Uh huh (affirmative).

Craig Gibson: What did Travis tell you?

Adam Jones: He said that Darcy is in the garage, go talk to her.

Craig Gibson: What did?

Adam Jones: So, I went into the garage and....

Craig Gibson: I guess, let me back up to Travis when you first encountered Travis. When you talked to Travis, what was your impression of Travis, you know your brother?

Adam Jones: That he was drunk.

Craig Gibson: That he was drunk. Ok. And that was basically, did you see anything else?

Adam Jones: No.

Craig Gibson: Did he look, when he was drunk, again levels of intoxication, how drunk would you say he was?

Adam Jones: Typical, normal, drunk ass self. He is an idiot when he is drunk. I can see it and that's, I figure that is what he was at.

Craig Gibson: Ok.

Adam Jones: Has kind of a glazed look like he was looking through you.

Craig Gibson: Did he look kind of mad or was he, was he pretty calm with you?

Adam Jones: No, he was calm with me at that time.

Craig Gibson: Ok. All right. And he basically just directed you to....

Adam Jones: He just said Darcy is in the garage and go talk to her.

Craig Gibson: Ok.

Adam Jones: I asked him what was going on.

Craig Gibson: Ok, that was my next question.

Adam Jones: Yeh, I asked him what was going on when he answered the door.

Craig Gibson: What did he say?

Adam Jones: Uhm, he said look what she did to me? Cause he had three scratches on his chest.

Craig Gibson: So, he pointed out some scratches.

Adam Jones: Yes, he just in his underwear when he answered the door.

Craig Gibson: Ok.

Adam Jones: He said, she did this to me, go talk to her.

Craig Gibson: So, where did he go after that?

Adam Jones: Just in the living room. I don't know where he went after that.

Craig Gibson: That's where he went (inaudible). This jumps out a little bit, this jumps ahead a little bit. How long do you think you stayed at the, at the house between the time you got there and the time, the time you left? What would you say?

Adam Jones: Fifteen, twenty minutes.

Craig Gibson: Sorry, that is a little out of order with my questions. Uhm, so when you, when you went to talk to Darcy, then what happened? What did she tell you and where was she?

Adam Jones: She was in the garage, in the car, on the phone. And then when I walked in there she got off the phone, stepped out of the car and said, he can't do this to me anymore. I am like, what is he doing? She is like, he kicked me. I said, ok, where? She said like in the leg. I said, ok, I says, she's like you are the only one who can calm him down, so I just want you to calm him down. I said, ok. I said, but here's the problem, I said, he's my brother; I says I cannot deal with him. I says if you want to file a report I'll call Summit County right now and have them come over here. She's like, no; I don't want to do that. And so I began to talk to her and ask her what had happened and she said they had been drinking. This is probably the, I don't know, the fourth or fifth time this has happened between these two.

Craig Gibson: Ok, and that goes a little ahead.

Adam Jones: Sorry.

Craig Gibson: She called you in the past, no that is good, cause I will just jump. Has she called you in the past, because you said this is the fourth

or fifth time that this has happened? Has she ever called you in past?

Adam Jones: She called me, she use to call me all the time when they lived in West Valley, when all this stuff would happen in West Valley.

Craig Gibson: How long ago was that? Long time?

Adam Jones: Like six, six years ago.

Craig Gibson: All right. How about within the last year, would you say?

Adam Jones: No.

Craig Gibson: Ok. All right go ahead, now you go back, this happened about four or five times you said?

Adam Jones: So, I asked her what had happened. And she is like, we got drinking and we just talked not even three days ago, how they can't drink anymore, because she turns into a complete idiot when she is drinking and he turns into a complete idiot when he is drinking, and then when they both start drinking it just turns into a mess, so. She is like, no I just want him to calm down, I just want him to go to bed and he needs to know she cannot do this to me. I am like, that is fine, I says, do you want me to call the Sheriff's Office because if you want to file a report they need to come here? And she said, no. So, I said, ok, so I talked to her and then I went and talked to my brother again and asked him what had happened. Well, so I asked her what happened and he come in while we were in the garage and again said, look what she did to me. I'm like Travis just go back into the house and I will come talk to you in a minute. And so then she began to show me a flagstick that was broken, saying he took that flag stick and did that to himself. And so I said, ok, I said, but still, I asked her, I asked her 18 thousand times, do you want to call the Sheriff's Office? And she is like, no, we can't afford to have him go to jail again. I can't afford it again. I'm like, well if he has done something to you, and he is beating you up, then you need to call. You need to have someone do this. She's like no. So, I said is there any marks? I looked, looked her body; I did not see any marks on her at all. I said, is the only thing he did was kick you? And she said, yes. I said, where? She's like in her leg. So, I said ok and went to talk to Travis. And then he admitted to me that he had made the marks on his body with the stick himself. And so, cause he's like I am going to get her in trouble cause he went on to tell me that she had warrants and blah, blah, blah and she would go to jail. So, I am like ok,

whatever. I said, you guys just need to go to bed cause I knew he was on the verge of, of passing out, just because he was almost gone. So, I said, go to bed. I said, and deal with it in the morning. Then I went back and talked to Darcy again. Said, ok Travis is in bed, I said do you want to call the Sheriff's Office, do you feel safe here, do you want to leave, do you want to go somewhere? Have you been drinking? Do you need to go somewhere to call someone, do you want someone here? And she is like, no, she's like, I will be fine. As long as he is calmed down and in bed, I will be fine. So, I said, ok, if anything else happens you need to call the Sheriff's Office. And then I left.

Craig Gibson: Ok. So, you did, you did suggest that one of them leave the house?

Adam Jones: Uh huh, (affirmative).

Craig Gibson: Ok. Did you suggest it to your brother or just her?

Adam Jones: I told him he needs to leave too, when I first got there. I am like, you just need to get away. You guys have been drinking. You need to get away from each other.

Craig Gibson: Did you offer to facilitate that in any way? Give your brother a ride?

Adam Jones: Every time when my brother gets into this state if I try and do anything, he has a tendency to want to get, not violent with me, but kind of want to push and he always wants to fight when he gets drunk, and I just didn't want to deal with it because I have dealt with it a hundred times before. He has come pounding on my door before in the middle of the night. I have tried to take him in and then he turns into a complete ass. And so I am like done, I am not dealing with you anymore when you are drinking. And he knows that cause now he doesn't call me, he doesn't come over when he gets like that. He will talk to me afterwards.

Craig Gibson: Ok. As far as the injuries, I don't know how superficial the scratches were, if you saw her injuries? Did you offer to facilitate any kind of medical treatment, calls?

Adam Jones: There was just a superficial scratch on his chest?

Craig Gibson: What about for Darcy's leg?

Adam Jones: I did not see anything.

Craig Gibson: Ok.

Adam Jones: And she was walking around. She walked up the stairs in the garage and she seemed normal.

Craig Gibson: Did you give either one of them, since there was some allegations of domestic violence, did you give either of them any written notice of their rights and remedies available to them under the, under the domestic violence?

Adam Jones: I didn't give them a pamphlet, no.

Craig Gibson: You didn't give them a pamphlet?

Adam Jones: No.

Craig Gibson: Did you give them any verbal notice?

Adam Jones: I told Darcy she could call the victim advocate if she needs to file a restraining order because we have dealt with this a hundred thousand times. I told her, I'm like, you guys are not good for each other. You guys cannot be together. If you are together you can absolutely not drink.

Craig Gibson: Ok. And Darcy told you that Travis kicked her?

Adam Jones: Yeh.

Craig Gibson: Did she say that he pushed her or kicked her?

Adam Jones: Said that he kicked her in her shin.

Craig Gibson: Ok. Uhm, did Travis break anything? Was there any damage to anything that you saw?

Adam Jones: No.

Craig Gibson: Ok. Did Darcy tell you about any damage or did you see any damage? And Travis told you, he told you about the story with the flagstick when he came into the garage?

Adam Jones: No, when I come back out. Cause when I was talking to Darcy, he come and opened the door and said, she did this to me.

Craig Gibson: Oh, ok, that is what I....

Adam Jones: And that is when Darcy said, no he took this flag stick and she showed me that flag stick and said he ran it down his chest. And then after I sent him back and was talking to her I went back to him and he told me, yeh I did that to myself.

Craig Gibson: So he admitted it after you went back in?

Adam Jones: Yes.

Craig Gibson: Did you have to work a little to get him to do it, to make that admission or did he just?

Adam Jones: Not a whole lot, because once I saw the flag stick there and she said that, I asked him, I am like, what are you doing? And that is when he said, I did it to myself because I was going to get her in trouble.

Craig Gibson: Ok. All right. Ok. Not necessarily even Darcy, but let's say in the last year have you, have you ever had to go over and kind of deal with Travis?

Adam Jones: Luckily I have been off every time something has happened.

Craig Gibson: So you haven't gone over and he hasn't called you, nobody has called you personally to go over in the last year?

Adam Jones: No.

Craig Gibson: Ok. And can you control Travis when he is drunk?

Adam Jones: Uhm, I can control him pretty well. I mean he will listen to me. Uhm, as far as like what he does, no.

Craig Gibson: Ok. (Inaudible)

Adam Jones: But, I mean, I can sit down with him and I can say, heh, you need to relax and you need to calm down, you need to stop and he will stop and be calm and just start talking about whatever.

Craig Gibson: Ok. When he drinks does he get violent?

Adam Jones: Oh, very violent.

Craig Gibson: He gets very violent. You have seen that in the past?

Adam Jones: Yep. I've, Summit County has dealt with him before. When he lived in Oakley they went there. I told them, heh, he likes to fight with police because he fought with the police in West Valley. So, I have told every body. He will run from you, he will fight with you, be careful.

Craig Gibson: Ok. Did you know that, did you find out about the, or did you know about the 911 call she made to Summit County after you left?

Adam Jones: No, cause I checked, after I left there I checked off. I was checking off at 10:00.

Craig Gibson: Ok, so

Adam Jones: So it was like 10, 10:10 when I checked off.

Craig Gibson: Ok, what was your schedule that day?

Adam Jones: Uhm, I was working. My schedule changes everyday.

Craig Gibson: And I appreciate that with a small department.

Adam Jones: Yes, cause it changes all the time. Sometimes I go in at 12, sometimes I go in at 2, sometimes I'll go in at 1. Depending on what hours I have, I'll cut it down to an 8 or 9 hour day.

Craig Gibson: What would you, on that day, what would you say your, your schedule that day?

Adam Jones: Uhm, I was working 12 to 10 that day.

Craig Gibson: 12 to 10, ok. And you checked off there about?

Adam Jones: After I was done with them about, I am guessing, about 10:10, I don't recall exactly what time I checked out.

Craig Gibson: Do you check off on dispatch or do you just...?

Adam Jones: Sometimes, well most of the time I will check off with them if they have me on, then I'll always check off. Sometimes I will go to work without checking on. A call comes out then they check me on, but I pretty much always check off with them if I am locked in one of the computers. So, then there has been, you know, times where you check on and they don't hear you and then you just go about your day.

Ed Spann: So that night, did you think you checked off or you know that you checked on?

Adam Jones: No, I checked off.

Craig Gibson: You checked off. Did you do a report? Did you go in and do a report of the incident?

Adam Jones: No.

Craig Gibson: You didn't do a police report on that?

Adam Jones: No, cause I figured, my thinking of when I did it, is she called my personal phone. I said, you know, I said, I can't be here as a law enforcement officer, if you want that, I will call Summit County right now. And she said, no, I don't want to do that. And so, I'll just let you go on.

Craig Gibson: Ok, good. I have to go back a little bit to the 911 call. Did you hear about it, or when did you find out that she called 911 and then there was some further...?

Adam Jones: She sent me a text at like 1:00 in the morning.

Craig Gibson: Ok, so, about 0100 she sent you that text?

Adam Jones: I don't know. She called me....

Craig Gibson: Did she call you or anything after that?

Adam Jones: I had a missed phone call from her.

Craig Gibson: What time was that, would you say?

Adam Jones: Uhm, I don't even remember. It was after I checked off, so.

Craig Gibson: Ok, so some time after that. Did you, did you see the number or did you see that she called you again?

Adam Jones: Afterwards I saw that I had missed a phone call from her.

Craig Gibson: From her?

Ed Spann: (Inaudible)

Adam Jones: I can see if I can see what time it was. What was that?

Ed Spann: You say afterwards? What time? When would you have noticed that?

Adam Jones: Before I went to bed. When I put my phone on the charger.

Ed Spann: Ok. Do you know what time you went to bed?

Craig Gibson: Sometime after 10:10.

Adam Jones: I probably didn't go to bed until 12 midnight, 11:30 midnight, something like that.

Craig Gibson: Did you, did you turn your, did you have your police radio on during that time and hear anything on the response?

Adam Jones: No, my computer was still on and I saw on my computer that another call had popped up. Well, I saw a call pop up and then it went away and then I was doing some other stuff getting undressed and I saw they were going back to, back to her house.

Craig Gibson: You saw that, about what time was that, do you remember?

Adam Jones: Quarter to eleven, somewhere around there.

Craig Gibson: Did you flip your radio on and take a listen to the response and everything?

Adam Jones: Yeh.

Craig Gibson: Did you? Ok. Uhm, have you received training in the investigation of domestic violence?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Do you remember when, do you remember when? When was the last time you attended specifically domestic violence training?

Adam Jones: I don't know. I think it was while I was at the Sheriff's Office.

Craig Gibson: Ok. So it has been a little while. How about a legal update? You have a legal update for a while?

Adam Jones: Just all the legal updates that we, that they do every year.

Craig Gibson: A year? Yearly. So you probably have had 2010?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Let me ask you this. This is going to be retrospective question? Looking back now that you have had time to kind of look back on what happened and all the things, what would you have done differently?

Adam Jones: Nothing. Absolutely, nothing.

Craig Gibson: Would you have maybe thought to call the Sheriff's Office when you saw this and who it was and thinking oh this is kind of....?

Adam Jones: Based on the circumstances that I'd seen with no physical injuries and she felt safe I would do absolutely nothing different.

Craig Gibson: Ok.

Adam Jones: Especially after the first time when she claimed that she went after him with a knife in Alaska and (inaudible) and she is still with him and the time before that where he spent 6 months in jail and the time before that. She said she is absolutely not scared of him.

Craig Gibson: So, is this, how long has those guys, how long has those two been together?

Adam Jones: The first time or the second time?

Craig Gibson: Well, if you can separate it ok. When did they, I guess when did they first get together, obviously?

Adam Jones: Like 6 years ago, they were together when they lived in West Valley. I wouldn't even dare venture to guess what, when it was.

Craig Gibson: How long have they been back together up in Kamas, up in your area?

Adam Jones: I wouldn't be able to tell you. A year, maybe longer. I have no clue. Cause he was with another girl, got her pregnant, they always had their problems. I think he went to jail with her for domestic violence. And I don't know what happened on the last one. I just, I just try to stay out of it, because he just needs to go to jail in my opinion.

Craig Gibson: Has he, has he, when did he start, does he have any drug problems? Or is there drugs involved?

Adam Jones: I'm sure he does.

Craig Gibson: Does he?

Adam Jones: I don't know any of his drug history. He doesn't talk about it. I know he drinks. I know that he has used drugs. As to what drugs he has used, I don't know, but I know, I mean, when he was married to his first wife, his first wife tried to kill herself in front of the kids. I know they were doing drugs then. I don't know what. He is crazy, when he drinks, when he, I really couldn't tell you what drugs he does. I've asked him recently. He said he hasn't been doing anything, just drinking and smoking spice, so.

Craig Gibson: Is that, is that, so he has been drinking and smoking spice?

Adam Jones: That is what he said.

Craig Gibson: That is what he told you? Another question that popped in. When you knew about this second response, did you, again going back to retrospective, did you think to let Summit County know that you had been over there and to give a little heads up that he was drinking?

Adam Jones: No. In retrospect, I probably would have but, I mean, they all know, they all know I have told them. I told everybody if you ever deal with him, he is an ass. He gets mean when he is drunk and he just wants to fight. So, I mean everybody knows that, everybody had dealt with him. Everybody knows who he is.

Craig Gibson: Do you think he will go to jail on this one?

Adam Jones: I will be surprised if he doesn't. He should have went to jail on the last one. I still don't know what they are doing with that. He had a court appearance today. Him and her went to it. I have no idea what happened. I wanted to go and find out what was going on but with everything that is going on I just want to stay, stay out of it. My parents were there. They called me, said that he showed up late and then they just rescheduled it, but to my understanding the one today was an order to show cause on his last one. I don't even know if he has been charged with this other one.

Craig Gibson: Yeh, I'm not sure what he's, I honestly don't know what his charges are right at the moment. I kind of stayed out of that, again that is why I didn't tell you too much.

Adam Jones: I have no clue.

Craig Gibson: You have been, you've given, you know, you have the best (inaudible).

Adam Jones: He just needs, first of all he needs to go either to an alcohol class and quit drinking. I think if he would quit drinking and her quit drinking they would be fine. But the second thing is he needs to go to jail for like 5 years. I don't even know if that would do any good. He was in Salt Lake County for 6 months after he got into a fight with her last time.

Craig Gibson: And that was down here?

Adam Jones: Yes.

Craig Gibson: That was his last domestic?

Adam Jones: Well, not his last domestic. That was his last domestic, I guess I can't say his last domestic with her, but that was his last long jail time because he was with her.

Craig Gibson: And that was the result of it? I mean that's pretty, six months is a long time in Salt Lake County.

Adam Jones: Well, I think he had, I think he had other domestic violence charges, I think he had like three or four cases.

Craig Gibson: It must have compounded, because six months in jail is, at least in Salt Lake County, is a pretty long stretch for domestic violence.

Adam Jones: Yeh, I don't know, I think he had some domestic violence charges with Judge Stoney and I think he had some sort of burglary charge going into a friends home and I don't know what he was in jail for what and what he got charged with, with each thing, so.

Craig Gibson: Ok.

Adam Jones: I know every girlfriend he's ever had, they have had problems with him, because the one before Kim was always trying to call us. We are like, we can't do anything for you, you need to call the Sheriff's Office. (Inaudible) out in the county.

Craig Gibson: Now do you guys have, does Kamas have an arrangement with Summit County on, because obviously there are just two guys, yeh two people in the department, which makes 24-7 coverage I would guess impossible, do you guys have an arrangement with them then?

Adam Jones: Yes, when we are off they handle the calls. We use to be on call 24-7, but we were getting way too many hours and so I met with the Sheriff and we arranged it to when there is any calls when we are off they will handle it.

Craig Gibson: And when you guys are on do you have certain calls that you handle. Is there times when you call, call the Sheriff's Office to handle certain types of calls, and again I am not that informed.

Adam Jones: There is a, there is a little list of some things, like, unattended deaths, uhm, I'd have to look at my sheet, there is like four of them. Felonies with only suspect information, which I mean, we take care of felonies all the time and don't really call them. I think just more of kind of if we need help, I think it was their way of setting some guidelines as to what they wanted to do, cause on every felony that we have suspect information we don't always call them to deal with it, because we just deal with it ourselves.

Craig Gibson: Right. Now do you guys do your own follow-ups and your own, do you have your own CSI stuff?

Adam Jones: We don't have any, that is what we call the County in for if we needed stuff like that.

Craig Gibson: Ok. That's probably just more for me to know, out of curiosity. It seems like it would be difficult to have two guys try to cover everything all the time.

Adam Jones: We tried it and we were there for about 2 ½ to 3 years before we finally were just so worn out and beat up that we had to get some help. I tried to beat City Council up to get more people and they just won't do it.

Ed Spann: How long have you been with Kamas?

Adam Jones: About 5 years.

Ed Spann: Are you from that area?

Adam Jones: Uh huh (affirmative).

Craig Gibson: Any questions for us?

Adam Jones: No, I don't think so.

Craig Gibson: You have my phone number if you have any questions give me a call.

Adam Jones: I just, I've thought of this a lot, in hindsight, there is really nothing that I could have done different. I mean if she was obviously beaten and bruised and it would have been a different story but there were no marks on her or no nothing. It is not like this is her first rodeo. I don't know what else to do.

Craig Gibson: Yeh, I think, you probably ought not to, if I was going to give you any advice, which is free, but, I, if you got a call from either of them to respond, I think the next thing I would do personally would be to call the Sheriff's Office and have them go and not deal with it. Family (inaudible).

Adam Jones: (Inaudible) on my phone with text messages like when he was in jail, she would say stuff, like what would you do, I mean she is crazy.

Craig Gibson: Yeh, that is one of those things you just have to, again you would have to try to distance yourself and not respond.

Adam Jones: And I tried, like I said the only reason why I went over there was because I thought it had something to do with Ryan, because he has been saying he wants to kill himself. They have had him down to different places and they just refuse to help him. So, I initially thought it was that. Knowing it wasn't, I says let's call the Sheriff's Office and she didn't want to. She didn't want to. She refused. There was really no marks on her that would lead me to believe that it was anything, you know, that she was going to die from. Then she goes and marries him. I don't understand that.

Craig Gibson: That is a little curious.

Adam Jones: It blows my mind. I don't think those two should be together. I don't know why they ever got back together after the first time.

Craig Gibson: Yeh, that is

Adam Jones: But what do you do?

Craig Gibson: Not really much you can do, from an outside perspective. And again for you, the problem you have, I guess to a certain extent is, being a law enforcement officer then you really have to distance yourself from being involved in any of their problems and make

sure they always have a third, third party, third agency that comes in and deals with it.

Ed Spann: And I would just add this in there, especially since you've said, that you have outlined a pretty good history for both of them, that he has gotten violent, he was drunk, and if it hadn't been, somebody could draw the line and say he wasn't yet, but he could be and they have already reported it, so you say you weren't a cop, but you are in uniform and (inaudible), I came from a small agency so I understand this, I understand what you are saying. Sometimes I don't want to be (inaudible) but you got a call. That's just free advice, he gave you, that is mine. Whether they want you to or not,

Craig Gibson: Just call.

Ed Spann: That is the easiest way to do it and then when in doubt, put a report out.

Craig Gibson: (Inaudible). It's one of those things that the obligation of a law enforcement officer (inaudible) the statute is fairly clear on the domestic violence of what law enforcement officer's shall do, shall do this, shall do this, shall do this. And again, you know, you were on the scene, you made the determination, and that is just what we have to look at is those steps to what you should do.

Adam Jones: Ok. And then, well I'm not going to go there, it's all good.

Craig Gibson: All right, any questions for us? If you think of one, call, you have my number. In fact, I'll give you my card (inaudible).

Adam Jones: I don't think so.

Craig Gibson: All right.

Adam Jones: But, here is my question. If I see this, I don't know, is there any way I can just talk to you without it being recorded? Just for advice questions, stuff like that? It doesn't matter. I'll record it. It doesn't matter.

Craig Gibson: Uh, you can, you can. Ok, go ahead.

Adam Jones: So, let's say the Sheriff's Office is doing the same thing. That they respond to these things and aren't doing anything and there's, and you know there is different situations going on. Where do I go at that point? Do I come to you guys and say, heh these guys are not

doing their job? Because I personally, believe that this is a personal vendetta between Dave and me.

Craig Gibson: And that is why we look at these things, because we are a neutral agency.

Adam Jones: Ok.

Craig Gibson: We are neutral. And many people could argue that but we are neutral and that is why people give it to us. We get a fresh look. We look at it. I don't know, obviously I don't know you, you don't know me. I have no allegiance to any department, well except the ones that I retired from and even then I would be fair. And so that is why we are looking at it. We are going to look at it fairly. Yeh, we are pointing out some things and that is why we ask in retrospect, you know. (Inaudible) we have to look at it.

Adam Jones: Sure.

Craig Gibson: And the political issues up there, whatever's going on up there, not my interest.

Adam Jones: But what can I do as a law enforcement officer to see that these guys are obviously doing the exact same thing and would have done the exact same thing. I talked to several officers afterwards and they would have done the exact same thing.

Craig Gibson: Let me go back to that. I'll answer that specific question. For an officer to say that I would have done the exact same thing, ok, I can't deal with that, because they weren't there. You were there and that is why we are talking to you. And cops will say, well I would have done the same thing, or I wouldn't have done anything different, etc, etc, etc. With what they said they would have done, can't do anything with. Now, if you had instances say, on this particular instance this happened and this happened and this happened, and we would do exactly the same thing. If you called and said, a Summit County Deputy responded to this call and did this, this and this, we would look at that. Do it the exact same way.

Adam Jones: Ok, but this is another thing, I mean, did Summit County or anybody ever come and talk to me, no. I personally think that is a little ridiculous, but that is just my own opinion.

Craig Gibson: And maybe, I don't know, you just alluded to the fact that there's, there might be some political issues up there and so perhaps, and again I don't want to conjecture something inappropriately, but

you know, that is why, maybe, they may want us to look at it and have an outside look and see. If this looks like a problem we want an outside agency to look, that way there is no bias and if there is no problem, there is no problem.

Adam Jones: And I understand that, but why didn't they do that with the first Chief of Police they did this to?

Craig Gibson: I don't know. (inaudible)

Adam Jones: You know, that's why I just don't know (inaudible). I understand you guys aren't but it is frustrating for me.

Ed Spann: I'm just basing everything on (inaudible).

Adam Jones: I completely understand. That is why I wanted to talk to you guys as, I mean, you guys are dealing with the same thing that I am doing, it is just frustrating that you have two nut cases that are going to try and destroy everything that you try and do. And when I say nut cases, I am talking about Darcy and my brother and now I have to go through all this because of them.

Craig Gibson: And having been around for a long time (inaudible) and we both have been in administrative positions in police work and you know we have had a lot of times look at those things because and the players in it a lot of times are the ones that, that, you know, they are the ones that got the problems but then law enforcement sometimes has to answer questions about what we do. And we know, you know sometimes we are dealing with people with mental illness, you know people with problems, but sometimes we have to answer then questions. Then again we have to make split second decisions, and that is all you are going through and I will tell you it is never fun to have anybody ask you or second guess you about your tactics, your activity, that is never fun.

Adam Jones: Well, it is just like now, why did they not throw him in jail? He's obviously got a problem, so why don't they throw his ass in jail?

Craig Gibson: And that goes to a question that you could go

Adam Jones: I don't understand.

Craig Gibson: You could go through any case we ever see with anybody, that you have ever seen, that we've ever seen, you could ask that question about a lot of those kind of things and if you ever find the answer to that let me know.

Adam Jones: It is just frustrating. Here you have this person doing something and I am doing everything I can in my best power to do anything and then now I am the one getting raked over the coals.

Craig Gibson: So, and it is never comfortable. So, we sympathize with you.

Adam Jones: And all the other history just kind of frustrates me and I don't know what to do.

Craig Gibson: I don't have any great advice for you. Wish I did. Wish I did.

Adam Jones: So, what is going to happen from here? What's going on?

Craig Gibson: Right now. I just put the report together. We have what we call a staffing. The attorneys here in the AG's Office and this division get together and they just look at the case and they look at the statutes and the law and your statement and what Darcy said and look at the case and basically see if there is any criminal liability there. And that is pretty much it. I'll keep you posted.

Adam Jones: So, like what about, and I know they got to do stuff, what about the Sheriff's Office bringing her, bringing Darcy in over there and like sitting there telling her like, sitting there pretty much saying, do I intimidate her? And trying to go at some angle that I am intimidating her. That my family is intimidating. What, what can anything be done about that?

Craig Gibson: Probably not, because that, those are just interview questions any more than any of the questions that might have been uncomfortable for you.

Adam Jones: And I understand that. But the way they are going about it and who they are going about it with, is all because they are trying to attack me. Because Dave is trying to attack me. That is what I am saying. Do I have to get hold of a Civil Attorney and find that out?

Craig Gibson: Yes, you probably, you probably, I interviewed Darcy last week but the subject of intimidation never came up. It was essentially these type of questions, as a matter of fact,...

Adam Jones: I know that is what I am saying, the Sheriff's Office is now calling her and bringing her in there and saying that we are intimidating her. I don't care, first of all, I don't want her to be with my brother, I don't want my brother to be with her, because I guarantee this is going to happen again. And then they go and get married.

Craig Gibson: And that's an issue, that again, that goes back to my, the only sound advice I probably could give you today, is that if they, because they are together, and because it is unpredictable of what may happen because of their past behavior, now you can hope, we will all hope that maybe they have learned from this one and that will be good and you won't have to deal with it again. I am just going to tell you, don't deal with it, don't go,...

Adam Jones: Well and I don't.

Craig Gibson: I know.

Adam Jones: On the last one while married to Kim, I did the same thing. They are always calling me. I'm like don't call me. But what do you say, what do you do?

Craig Gibson: I would just call and say look if you have a problem, or I'll call the Sheriff's Office for you, and you call the Sheriff's Office and let them respond. I'd call the Sheriff's Office, that's just me, I would call the Sheriff's Office.

Adam Jones: Even if you don't see anything, even if they were having a verbal argument?

Craig Gibson: Absolutely. Absolutely

Ed Spann: Especially in your type of position you have a situation, you are from there, I just would.

Craig Gibson: Absolutely. That's my advice and that's if I've given you any good advice that's it. Do not deal with it. No matter what. If you can see it is going down the road and you have the vision to see that, you see that going down the road just tell them, (negative) as a matter of fact, I am calling the Sheriff's Office, I don't care what you guys want to report, what you want to do, I am calling them.

Ed Spann: Yeh.

Craig Gibson: And then you can step away and then do a report. You are in a tough spot because it is hard to separate the two halves between being a family member and being a cop.

Ed Spann: That's just it, you live there, you are from there and you've got your brother there, you get the call and you get there on this aspect of it and then you get there like Craig said, now call.

(Inaudible)

Adam Jones: Even, even like they said something happened to Ryan. I have no clue what happened to Ryan. But, I want to know but yet I don't want to go fishing and try to find out what happened.

Craig Gibson: Did you talk to those kids or see any kids while you were there?

Adam Jones: No, everybody was in bed and I asked them, I am like where are the kids. They are all asleep. Have they been out here? They are like no.

Craig Gibson: And this is what happened, obviously what now we know, because hindsight is twenty-twenty, when you left, it spun up again and it got, it went further and there were bigger problems, alleged. So, then Ryan gets involved and it just got out of hand because obviously your brother was drunk and he gets violent, and allegedly he did, and allegedly ...

Adam Jones: Why would she stay with him? I don't get it. I don't understand.

Ed Spann: Do you have two cell phones? Work phone and a cell phone?

Adam Jones: Yes, yes. You guys called me on my personal phone.

Craig Gibson: Ok, that's the only number.

Ed Spann: What is your work phone number?

Adam Jones: That is 435-731-0594. So how did you get my personal number?

Craig Gibson: Darcy gave it to me.

Adam Jones: Ok.

Ed Spann: What is the last four, I am sorry?

Adam Jones: 0594. So, I mean do I need to save these text messages from her?

Craig Gibson: I would.

Ed Spann: I would go through and save them all.

Craig Gibson: Yep. Save everything. Did you find the one that she sent yet? At 1:00 that morning?

Adam Jones: 1:08.

Craig Gibson: 1:08.

Adam Jones: (inaudible)

Craig Gibson: No, you might have to (inaudible).

Ed Spann: Do you have his (inaudible) license?

Adam Jones: Do you need me to read it?

Craig Gibson: Glasses, no I can see it?

Inaudible

Adam Jones: So, I mean at this point that is exactly what I did. I ignored it because I didn't want to deal with it. I told her to call the Sheriff's Office. So, when she, you know, when she sent me the text message, I didn't even respond to it.

Craig Gibson: That is when you probably, that is when you probably should have just called the Sheriff's Office and said, I am out of here. I'll call the Sheriff's Office they can.....

Adam Jones: Well, I think in the incidence that something would have happened to the kids in the first time, that is a different story, but where they got into an argument, he scratched himself there is no physical injuries on him. It's, you know, I mean how many, how many times do you respond to stuff like that?

Ed Spann: It would be difference being in this one though, your brother, someone else, and then you, you have kind of gone through and this one you are asking in hindsight. You talked about having it happen with her before, but the next girlfriend, his first wife and when he gets drunk he gets, what did you say?

Adam Jones: If he is dumb enough to stay with them, why is it our problem?

Ed Spann: Ok, well.

Adam Jones: Do you know what I am saying?

Ed Spann: Ok, well, we've been doing this a long time and so we have all seen these where we wonder why, but we just get to go. So, he is

saying in hindsight, you get something with family members, someone you know, get someone else to look at it.

Craig Gibson: Yeh, get somebody else, just bring him in. That's just, that's just get that other, get that other, you've got the luxury of having another agency that you got kind of a MOU, MOA with. You've got an agreement that they will come in and use that agency and have them come in and you know there is nothing like being able to give your problem over somebody else's problem to somebody else.

Adam Jones: And see that is the other thing, I mean, he is my brother and he is always going to be my brother. I can't change family. It's not like I am not going to talk him.

Ed Spann: No, you can talk to him (inaudible)

Adam Jones: What I am saying is that I don't want to go there because I don't want to be involved in the bull shit because she, she is just as crazy as he is half the time. She is nuts.

Craig Gibson: And you've got to have the vision to say, ok, maybe I just, maybe I've got to see my brother. He is still your brother. But maybe you have to see him on your terms.

Adam Jones: I mean when he was in Salt Lake County, like a dumb ass I went and seen him, but once a week. I hope to hell he goes to Summit County and they don't let me go see him cause I don't want to deal with it. I'm done.

Ed Spann: As a brother you can do that. The difference when you went there, you went as a visitor, here you went, whether you said you were or not, you're dressed like that, what would any one else assume you are? You're a police officer. And that is a tough thing to do, because we can't turn it on and off.

Adam Jones: But, if I, but I guess the hard thing is, it doesn't matter if I am in uniform or not they are going to always look at me as a police officer. If I went there in my underwear.

Ed Spann: And there is some truth in that?

Craig Gibson: There is yeh. There is truth.

Adam Jones: It wouldn't have mattered. And if I don't answer the phone call, if I ignored her or something happened, then something else can happen to me anyway.

Craig Gibson: Actually on that one probably not.

Ed Spann: But, here is the deal. You went, you saw and you just have to go, ok, normally could, but on this one, family member, you got to get someone in there. In the allegations, you go back and look at the code, it says, there is allegations of she said, he kicked her, whether you can see or not.

Adam Jones: But this is the other problem I have with that, we took a case just like this, where the mother hit the daughter, and we took it to the County Attorney's and they said, we should never have arrested her because there was no mark. So, now I am going off of that, too.

Craig Gibson: Ok. You did the report and you let those guys make those determination. Cause we do the investigation.... (inaudible).

Adam Jones: And I understand that. I'm sure you probably know how hard it is to, you know, here you are fighting the County Attorney's and they are not going to do anything. It is just frustrating.

Craig Gibson: In your case, in this case, we are going to go back to this case a little bit. Again my advise, and I have repeated this too many times, this will be the last time I promise, in this particular case when you walked in and you saw what it was looking like, which was a mess, your brother's drunk, you've got allegations of, even though he has recanted,...

Adam Jones: He is always like that, though.

Craig Gibson: And that is a problem.

Adam Jones: So, I can't go over there?

Craig Gibson: You need to go, well in this particular instance, you need to back out and say, I am just calling Summit County and let them come over and deal with it. Again, we're not saying, of course we are not saying you don't mess, you don't mix with family, but you just have to recognize when you get, if they are being like that, like you describe them, because you know that, you are not walking in to this totally blind. You walk in and go, this just looks bad, this just

doesn't looking right, I am backing out and then I am calling Summit County. Again..... (Inaudible)

Adam Jones: I understand, it just happens so much, and everybody is just.....

Ed Spann: You stay and keep the peace and call them. As soon as your brother said she is out in the garage, look what she did to me, right there, you just don't put yourself in that position. Back off, get the phone, call, get the radio, saying have a Deputy run this for me.

Adam Jones: I guess this is hard, cause my brother has hurt himself, he has done all kind of stupid things before and it is just, I guess I (inaudible).

Craig Gibson: And that is why we are asking you cause we want your perception at the time, based on your history and those kind of things. We can't, we weren't there and that is why we wanted to talk to you about it.

Ed Spann: I'm not really, I'm just based on what you told me...

Adam Jones: I know, it's, it's just frustrating because you are stuck between a rock and a hard spot. (inaudible)

Craig Gibson: (Inaudible) You truly are.

Adam Jones: So, but, you know I mean it, I don't know.

Craig Gibson: It's a tough spot. It really is. And again we appreciate that. So.

Adam Jones: So, as far as, do I need to go talk to POST, what I don't?

Craig Gibson: You don't have to do anything right now.

Adam Jones: A thing with this?

Craig Gibson: There is nothing to do right now, as I kind of finish this up, we are, I'm going to, are we done with this interview? Let's be done with this interview. It is, what time is it?

Ed Spann: 11:12.

Craig Gibson: 11:12, 3-7-11 we finished our interview with Chief Adam Jones.

Addendum E

FILED DISTRICT COURT
Third Judicial District

AUG 10 2012

Summit

By

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT, SILVER SUMMIT
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

ADAM HOWARD JONES,

Defendant.

RULING and ORDER

Case No. 111 500 107 FS

Judge: L.A. DEVER

This matter came on for a Preliminary Hearing on November 28, 2011. The State was represented by Matthew Bates. The Defendant was present and represented by Ronald J. Yengich.

Testimony was taken and argument made. The parties requested to brief the issues involved before the Court issued a decision on bindover. The matter was initially assigned to Judge Shaughnessy, as the trial judge. However, the parties and Judge Shaughnessy determined that the Magistrate that heard the Preliminary Hearing was the proper party that should be ruling on the sufficiency of the evidence for bindover. The case was then re-assigned to Judge Dever, who had sat as the Magistrate.

This Court, having reviewed the transcript and the memoranda submitted by the parties as well as considering the testimony presented at the Preliminary Hearing

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makes the following Findings and Ruling.

Background

1. The Defendant is the Police Chief of Kamas City.
2. On February 15, 2011, the Defendant received a telephone call from Darcy Martinez, the live-in girlfriend of his brother, Travis Jones. The call was made to the Defendant's personal cell-phone.
3. The call was received just before the Defendant's shift was to end. He was asked by Ms. Martinez to come to his brother's house. (P.H. p.19)
4. There is no evidence from Ms. Martinez or the Defendant that the conversation mentioned any domestic violence.
5. The Defendant, in an interview, stated that he had no idea that any issue concerning domestic violence was involved but that he was being asked to come over because of a family issue concerning his nephew. (Ex 1, p.19)
6. When the Defendant arrived he was met by his brother who was obviously intoxicated, but calm, and was informed by his brother that he should talk with Ms. Martinez, who was in the garage. (P.H. pp. 5, 21)
7. The Defendant met with Ms. Martinez. She stated that she wanted him to talk to his brother and calm him down. Ms. Martinez stated that his brother had kicked her in the leg. The Defendant stated he did not see any injury. The Defendant stated

that he asked Ms. Martinez if she wanted him to call the Sheriff's Office. (P.H. pp. 7, 22)

He also informed her that if she wanted to make a police report he would call the Summit County Sheriff's Office for her, as he could not be involved since he was a family member. (P.H. p. 7) Ms. Martinez said she did not want him to contact the Sheriff, just to put his brother to bed. (P.H. p. 22)

8. The Defendant again offered to call the Summit County Sheriff's Office but both his brother and Ms. Martinez declined the offer.

9. After putting his brother to bed, the Defendant left the residence and went home. This was shortly after 10:00 p.m. The Defendant was now off duty.

10. Approximately 10:45 p.m., Summit County Sheriff's Office received a call about a domestic disturbance at Jones/Martinez residence. They responded and found a violent altercation in progress. Travis Jones was arrested. The Defendant later saw the information about the call to Summit County Sheriff's Office on his police computer. He did not become involved and let the Sheriff's Office handle the matter.

11. The next morning the Defendant went to the Summit County Jail to check on his brother.

12. There is conflicting testimony as to what conversation was had between the Defendant and his brother at the jail.

Standard for Bindover

13. As pointed out by the State, the bindover standard is relatively low. The State bears the burden of demonstrating probable cause. As pointed out in *State v. Clark*, 2001 UT 9, ¶ 16, the proof needed to establish probable cause is the same as required to support an arrest warrant.

14. Additionally, the magistrate does not sift nor weigh the evidence. The magistrate "must view all evidence in the light most favorable to the prosecution and draw all reasonable inferences in favor of the prosecution. *Ibid.* ¶ 9

15. However, the prosecution must still produce believable evidence of all the elements of the crime charged. *Ibid.* ¶ 15. Additionally, the prosecution must present sufficient evidence to support a reasonable belief that the defendant committed the offense charged. *Ibid.* ¶ 16.

Conclusions based on the Evidence

16. It is true that the magistrate is not to "weigh" the evidence. This prohibition applies to conflicts in the testimony presented to the Court not to the requirement that there be sufficient evidence to establish that the elements of the crime have been met by the prosecution in its case in chief.

17. The elements of the charges contained in Count II and Count III of the Amended Information are somewhat similar. Count II charges the Defendant with being

a municipal officer that willfully omitted performing a duty imposed. Count III charges the Defendant, with the intent to benefit another, to knowingly refrain from performing a duty imposed upon him by law.

18. Addressing Count II, the State contends, in its memoranda, that the Defendant is a Municipal Officer with duties that include suppressing riots and disturbances and enforcing ordinances, citing to the Kamas City Ordinance #02-1. According to the State's argument, anyone who holds a position of trust and authority or command and is authorized to exercise a specific function is a municipal officer. Under the State's argument all police are municipal officers. The Court disagrees. The statute, UCA 10-3-826, talks about official neglect and misconduct and encompasses the special functions of the municipal officer. Those type of functions do not relate to the general duties of a police officer. In fact, the Ordinance #02-1 talks in ¶ 3 of the additional powers and duties of the chief of police and all police officers. It is this section of the Ordinance that the State claims the Defendant has violated and therefore the correct statute, for this incident, is UCA 76-8-201. The Court therefore declines to bindover the Defendant on the Charge of Official Neglect as a Municipal Officer, a class A misdemeanor.

19. The State claims that the Defendant failed to follow the obligations imposed on him under UCA 76-8-201. The Defendant argues that he responded to the

call from Ms. Martinez as a family member and not as a police officer. The State argues that he appeared in his uniform and before the end of his shift and was therefore on duty. There is no question that he received the phone call from Ms. Martinez on his personal cell phone and a few minutes before the end of his shift. The State argues because he appeared in his uniform and police car it somehow changes the facts of his appearance. If this was a case of an appearance at a stranger's door this claim might have some merit. This was his brother's home, the fact of his dress has no bearing on the knowledge of his brother or Ms. Martinez nor does it impute that he was appearing as a law enforcement official.

20. The State argues that the Defendant was responding to a call of domestic violence. There is no evidence of that claim. Nor is there any evidence of his encountering domestic violence when he arrived at the residence. In fact, the only testimony was that his brother and girlfriend were calm. If there was an altercation in progress when he arrived, his obligations as a police officer to prevent criminal activity would have been in play. That is not the evidence. Additionally, there was no sign of a previous altercation.

21. The State argues that the Defendant should have cited or arrested his brother for domestic violence. The evidence establishes that the Defendant asked Ms. Martinez if she was injured, if she wanted to file a complaint, or wanted an officer from

the Summit County Sheriff's Office to come and take a report. He pointed out that he could not take a report because he was Travis' brother. Ms. Martinez declined and said she wanted the Defendant to put his brother to bed.

22. The elements to be established for a violation UCA 76-8-201, as they apply to this case are

- a. To knowingly refrain from performing a duty imposed by law, and
- b. To do so with the intent to benefit himself or another.

In order to find a violation, the State must prove both elements. There certainly isn't a question that determining intent or a knowing violation is a question for the fact finder. However, the question of whether a duty is imposed is one of law and is the province of the Court. In order to determine whether a duty existed, the Court must look to the requirements of the Cohabitant Abuse Act. Before reviewing that Act, the Court notes that the argument that Ms. Martinez is a "vulnerable adult" under UCA 76-5-111.1 has no merit. The term "vulnerable adult" is defined under UCA 76-5-111 (1)(s) and there is no showing that she fits under the definition. The State contends that there are three requirements imposed on law enforcement by the Cohabitant Abuse Act. However, all requirements of the Act are predicated on the an officer responding to an allegation of domestic violence. That is not the fact of the instant case. The evidence establishes that the Defendant received a phone call on his personal cell-phone from

the girlfriend of his brother. While there may be conflict as to the content of the conversation, it is clear that there was no mention of any domestic violence in the call. It is not disputed that Ms. Martinez was calling the brother of her boyfriend, not the police. It is also clear that there was no altercation occurring when the Defendant arrived at the house. The statute requires that a law enforcement officer has certain duties when responding to an allegation of domestic abuse. There is no showing that the Defendant was responding to an allegation of domestic abuse, therefore the statute and the duties arising under it have no application to the Defendant in this incident. The Court would note that the Defendant asked Ms. Martinez, more than once, if she wanted to make a claim of domestic violence and stated that if she did, he would contact the Summit County Sheriff's Office for her and have an officer respond. There is nothing to contradict this evidence.

23. This count is charged as a class B misdemeanor, therefore the Court will treat the Defendant's request as a Motion to Dismiss for failure to allege an essential element of the crime. That Motion is Granted.

24. Count I charges the Defendant with Witness Tampering, a third degree felony. The elements of the charge are that the accused

- a. believing that an official proceeding was pending or about to be instituted, or with the intent to prevent an investigation

- b. attempted to induce another to testify falsely or withhold information.

25. There is no evidence presented that an official proceeding was pending or about to be instituted when the Defendant visited his brother at the Summit County jail the morning after February 15, 2011. Nor is there any evidence that the Defendant believed that an investigation was pending. The State argues that the Defendant should have known there would be an investigation. That is not the standard required by the statute. The question then is there sufficient evidence to find that the Defendant's action was an intent to prevent an official investigation. Likewise, there is no showing of this aspect of the element. As pointed out in *Melessa v. Randall*, 121 Fed.Appx. 803 (10th Cir. Feb. 1, 2005) (unpublished), Utah law requires

... the offender must subjectively believe that an official proceeding or investigation is currently pending or will be initiated in the future, and he must induce false or incomplete testimony from a witness who may be called to testify or provide evidence concerning that proceeding or investigation.

Id. at 807

26. There is no evidence that the requirement of "belief" as outlined by *Melessa* has been met by the State's presentation of evidence.

27. The second element of the crime is that the Defendant attempted to induce another to testify falsely or withhold information. There is some conflict between

the witnesses as to actually what was said. The jailer has given the Court two versions. However, for the purpose of this Ruling, the Court considers only the one relied upon by the State.

28. In order to address this issue, there must be a discussion as to what is potentially being investigated. In this case, the investigation centers on the claim by the State that the Defendant failed to comply with the requirements imposed on an officer by the cohabitant abuse act. That act directs certain actions to be performed for the benefit of a victim of domestic violence. The alleged victim in this case is Darcy Martinez. What relevance does the Defendant's conversation with his brother concerning his being awake or asleep or when he was awake or asleep have to do with the issue of whether the Defendant complied with the requirements alleged to be imposed on him by the statute. Ms. Martinez is the only witness, other than the Defendant as to what occurred between the Defendant and Ms. Martinez in the garage. The evidence establishes that Travis was in the house during the exchange. Whether he was asleep or not is immaterial as he was not present in the garage. If he is not present and had no participation he is not a witness and therefore there can be no issue of witness tampering. The Court declines to bind over on Count I.

Conclusion

29. The Court concludes that the State has not met its burden to establish

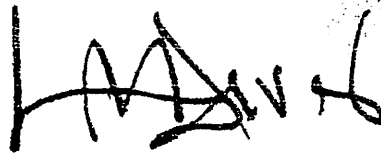
sufficient evidence to support a reasonable belief that there has been Witness Tampering, Count I, a third degree felony or Official Neglect and Misconduct, Count II, a class A misdemeanor, and therefore denies a bindover on those two counts.

30. The Court concludes that the State has not met its burden to establish an essential element of the charge of Official Misconduct, Count III, a class B misdemeanor, and therefore grants the Defendant's Motion to Dismiss that count.

This constitutes the Final ORDER of the Court

Dated this 9th day of August, 2012.

BY THE COURT

A handwritten signature in black ink, appearing to read 'L. A. Dever', written over a horizontal line.


L. A. DEVER
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing RULING was mailed
this 10 day of August, 2012, to the following:

Ronald J. Yengich
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Deputy Court Clerk

